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POSTPARTUM PSYCHOSIS: THE BIRTH OF A NEW DEFENSE?

On January 23, 1989, Matthew Davis was born. Ten days later, he was dead. He had been a happy, healthy newborn. On February 2, his mother, Andrea, went to check on him while he slept. When she looked into the crib she saw, not her son, but an image of the devil. Andrea suffocated the image, wrapped it in a blanket, drove to a nearby bridge and dropped the bundle into the Brighton River.

On returning home, Andrea realized Matthew was missing. Having no recollection of what she had done, she reported his kidnapping to the police. Three days later, after an extensive investigation, Matthew's body was discovered in the river. Andrea Davis was arrested and charged with the murder of her son.[1]

That a mother could actually kill her own child is so unbelievable, so foreign to our understanding of the mother-child relationship, we instinctively feel it must be an act of insanity. Whether this insanity is such that would exculpate her from responsibility is another issue.

Postpartum psychosis is gaining attention in the defense of mothers who commit infanticide.[2] It has been involved in as many as thirty-five cases in recent years.[3] This Comment will first define the various postpartum disorders, then discuss the causes, symptoms and treatments. Second, a brief historical background will be provided. Third, a comparison of postpartum psychosis and premenstrual syndrome (PMS) will be made. Fourth, relevant statutory and case law will be examined. Fifth, postpartum psychosis as a substantive defense will be analyzed. Next, obstacles to the acceptance of the defense will be discussed. Finally, this Comment will address the effect of postpartum disorders on the family.

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1. The scenario chronicled here is fictitious. It is designed to represent an "ideal" case for the use of postpartum psychosis in connection with the defense of the mother's action.

2. *Infanticide* is defined as "child murder." *Filicide* is defined as "the act of killing one's child." FUNK & WAGNALLS NEW COMPREHENSIVE INTERNATIONAL DICTIONARY 647, 473 (Encycl. ed. 1982). Although *filicide* is the appropriate term, the term *infanticide* is used more often in these cases and will be used throughout this Comment.

3. Telephone interview with Daniel Katkin, head of the Department of Administration of Justice at Pennsylvania State University (Sept. 22, 1989) [hereinafter Katkin]. *See infra* notes 108-09.

I. RECOGNIZING THE ILLNESS

Postpartum disorders are a temporary mental illness that may occur following childbirth and range in severity from mild depression to psychosis.[4] The disorder is divided into three categories: maternity or baby blues, postpartum depression, and postpartum psychosis.

Maternity blues or baby blues affect fifty to eighty percent of new mothers[5] and are considered normal.[6] Baby blues are a temporary mood disturbance with symptoms including restlessness, tearfulness, insomnia,[7] anxiety and mild depression.[8] Since this condition is considered normal and usually dissipates quickly, mothers rarely seek treatment.[9]

Postpartum depression is more intense than baby blues.[10] It ranges in severity from moderate to extreme depression.[11] Symptoms include mercurial mood swings, loss of appetite, sleeplessness,[12] high anxiety or panic attacks,[13] fatigue, tearfulness and depression.[14] During this time, mothers may experience suicidal feelings or thoughts of harming or killing their babies.[15] Estimates are that eight to twenty percent of new mothers experience postpartum depression.[16]

Postpartum psychosis is the most extreme form of the disorder.[17] There are three activity levels or stages in the brain: receiving, interpreting, and reacting.[18] Psychosis may occur on any or all

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4. Moss, *Postpartum Psychosis Defense*, A.B.A. J., Aug. 1, 1988, at 22. *See also* Toufexis, *Why Mothers Kill Their Babies*, TIME, June 20, 1988, at 81.

5. Trigoboff, *Postpartum Blues: Cases Test Use as a Murder Defense*, L.A. DAILY J., Dec. 16, 1987, at 1, col. 4; *see New Clues to Baby Blues*, PREVENTION, Aug. 1985, at 66.

6. Lee, *Postpartum Emotional Disorders*, MED. TRIAL TECH. Q. 286, 290 (1984).

7. C. DIX, THE NEW MOTHER SYNDROME 10 (1985).

8. Lee, *supra* note 6, at 290.

9. C. DIX, *supra* note 7, at 10. (The three days following delivery is a latent period, and postpartum disorder is rare during this time. Baby blues most often occur between the third and fifteenth day following delivery.).

10. Lee, *supra* note 6, at 290.

11. K. DALTON, DEPRESSION AFTER CHILDBIRTH 23 (1989); *see* Stein, *The Maternity Blues*, in MOTHERHOOD AND MENTAL ILLNESS 124 (1982).

12. Toufexis, *supra* note 4, at 81.

13. C. DIX, *supra* note 7, at 56.

14. D. INWOOD, RECENT ADVANCES IN POSTPARTUM PSYCHIATRIC DISORDERS 11 (1985).

15. Toufexis, *supra* note 4, at 81.

16. *Id. See* Trigoboff, *supra* note 5, at 1, col. 4 (Like other forms of postpartum illness, postpartum depression does not occur until at least three days following delivery but lasts much longer, generally peaking six weeks after delivery.).

17. STEDMAN'S MEDICAL DICTIONARY 1166 (23rd ed. 1976) (Psychosis is defined as "a mental disorder causing gross distortion or disorganization of a person's mental capacity . . . and capacity to recognize reality.").

18. Telephone interview with Dr. Susan Hickman, Psychologist, Licensed Family Therapist and codirector of Postpartum Mood Disorder Clinic in San Diego, California (Mar. 22,1989) [hereinafter Hickman].

three levels. For example: on the receiving level, a mother might look at her child and actually see the devil or some other image; on the interpreting level, a mother might see her child vomit and interpret this to mean her child is the devil; on the reacting level, a mother might see her child crying, knows he is crying, and believe the way to stop the crying is to suffocate the child.[19]

The symptoms of postpartum psychosis are similar to those of postpartum depression but include hallucinations, delusions, agitation, severe depression, mania and deviation in moods.[20] Postpartum psychosis may lead to suicide or infanticide.[21] The occurrence of postpartum psychosis has been estimated to range from one in one thousand[22] to one in three thousand births.[23]

There are two main postpartum psychosis causation theories. The most widely accepted theory is that the disorder is caused by hormonal fluctuations occurring after childbirth.[24] A woman's "biochemical makeup undergoes massive change and stress after childbirth and [that] can . . . lead to a temporary breakdown in the normal flow of brain chemicals that creates [a woman's] natural state of mental balance."[25] "During pregnancy, estrogen and progesterone increase a thousandfold . . . ."[26] Following birth, these levels drop suddenly to normal or below normal.[27] This rapid change in estrogen and progesterone levels has been compared to a drug addict experiencing sudden withdrawal.[28]

An alternate causation theory, supported by Dr. Stuart Asch, Psychiatrist at the New York Hospital, is that it is "not a hormonal problem . . . those with the illness are likely suffering from manic-depressive tendencies that could be dormant."[29] These psychiatric problems are then triggered by the birth[30] and appear during the period of change which the woman's body undergoes following the birth.[31]

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19. *Id.*

20. C. Dix, *supra* note 7, at 10.

21. D. Inwood, *supra* note 14, at 7.

22. Hickman, *supra* note 18. (Furthermore, eighty percent of all psychotic episodes take place within ten days after delivery. It is, however, possible for any form of postpartum illness to develop up to one year following the birth.).

23. C. Dix, *supra* note 7, at 11.

24. D. Lynch-Fraser, The Complete Postpartum Guide 9 (1983).

25. C. Dix, *supra* note 7, at 9.

26. Toufexis, *supra* note 4, at 83.

27. *Id.*

28. R. Norris & C. Sullivan, PMS: Premenstrual Syndrome 156 (1983); *see* D. Lynch-Fraser, *supra* note 24, at 16.

29. Zeldis, *Post-Partum Psychosis - A Rare Insanity Defense*, N.Y. L.J., Sept. 19, 1988, at 2, col. 3.

30. Moss, *supra* note 4, at 22.

31. Jordan, *Couple Seeks New Laws to Deal with Postpartum Depression*, L.A. Daily J., Mar. 21, 1988, at 2, col. 1.

Treatment has, however, proven quite effective.[32] The type of treatment depends to some extent on the causal theory. Treatment may include medication, hospitalization, electroconvulsive therapy and counseling.[33] Under the hormonal theory, treatment following the delivery often includes doses of hormones such as progesterone, which has been very successful.[34] Severe cases of postpartum psychosis are sometimes treated with Thorazine to help control violence and anxiety.[35] Whatever treatment is used, women usually recover quickly with the return of menstruation.[36]

The diagnosis of postpartum disorders is difficult since "[n]ot all psychiatrists accept postpartum [disorders] as an illness."[37] In fact, the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* (DSM-III) does not list postpartum disorders as a separate category.[38] Early in the twentieth century, the American Psychiatric Association declassified postpartum disorders.[39] The DSM-III does, however, recognize that childbirth may cause a "Major Depressive Episode."[40] The DSM-III also provides for a diagnosis of postpartum psychosis under the category of "Psychotic Disorder Not Otherwise Specified."[41] Prosecutors often attempt to impeach a psychiatric diagnosis of postpartum psychosis on the grounds that it is not accepted by the medical community and not listed as a separate category in the DSM-III.[42] However, the diagnosis is appropriate under the DSM-III.[43]

A number of other factors contribute to the difficulty of diagnosing postpartum disorders. First, the disorder receives only cursory attention in medical schools. Some doctors state it was never covered, or that it was touched on only briefly.[44] Second, the illness often goes undiagnosed because it is unclear who is responsible for its treatment. Postpartum disorders are a psychiatric illness, but

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32. Toufexis, *supra* note 4, at 83.

33. *Id.*

34. Lee, *supra* note 6, at 291.

35. C. Dix, *supra* note 7, at 51.

36. Lee, *supra* note 6, at 291 (treatment is the same regardless of the theory).

37. Moss, *supra* note 4, at 22.

38. *Id.*

39. Hamilton, *The Identity of Postpartum Psychosis*, in MOTHERHOOD AND MENTAL ILLNESS 1 (1982); *see Postpartum: Beyond the Blues* (Lifetime Cable Network television broadcast, Mar. 22, 1989) [hereinafter *Beyond the Blues*] (videotape on file at the Thomas M. Cooley Law School Library).

40. AMERICAN PSYCHIATRIC ASS'N, DIAGNOSTIC & STATISTICAL MANUAL OF MENTAL DISORDERS 221 (3d ed. 1987) [hereinafter DSM-III].

41. DSM-III, *supra* note 40, at 211. *See also* AMERICAN PSYCHIATRIC ASS'N, PSYCHIATRIC GLOSSARY 103 (1984) (Postpartum psychosis is defined as "an inexact term for any psychosis (organic or functional) occurring within 90 days after childbirth.").

42. Trigoboff, *supra* note 5, at 1, col. 4.

43. *See* DSM-III, *supra* note 40, at 211.

44. *Beyond the Blues*, *supra* note 39.

unless the women seek counseling, a psychiatrist cannot recognize and treat the illness.[45] Third, women usually leave the hospital two to three days following delivery, before most postpartum disorders occur.[46] Follow-up medical treatment for mothers is limited. They have only one checkup six weeks following delivery. By this time, many postpartum disorders have peaked.[47] Other cases, however, continue beyond the six week post-delivery checkup, and with no further medical examinations the symptoms are not noticed. Further, some postpartum depression is considered normal. This expectation, combined with lack of medical care in the weeks following delivery, often means postpartum disorders are not recognized until a severe psychotic episode occurs.[48]

Some tendencies in postpartum disorders may facilitate diagnosis. While postpartum illness is not hereditary, there appears to be a genetic predisposition. It is more likely to occur in women whose mothers experienced postpartum disorders or who have a family history of manic-depressive episodes.[49] Women who experienced a mild postpartum disorder with their first pregnancy are more likely to have a similar, often more severe, problem with subsequent pregnancies.[50] Without treatment, the recurrence rate is about sixty-eight percent; with treatment, recurrence is limited to seven percent.[51] Additionally, breastfeeding may cause a delayed reaction. For many women, who experience a postpartum disorder later than usual,[52] the delayed reaction is caused by discontinuation of breastfeeding. This triggers an influx of hormones that most women who do not breastfeed experience immediately following delivery.[53]

It appears the medical profession is showing a new interest in postpartum disorders.[54] A Postpartum Mood Disorder Clinic has been established in San Diego.[55] Mothers experiencing problems have also established support groups.[56]

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45. Hickman, *supra* note 18.
46. Toufexis, *supra* note 4, at 83.
47. Hickman, *supra* note 18.
48. D. Lynch-Fraser, *supra* note 24, at 23.
49. Hickman, *supra* note 18.
50. *Id.*
51. *Id.*
52. *See* C. Dix, *supra* note 7, at 9.
53. Hickman, *supra* note 18.
54. Brockington & Kumar, Preface to Motherhood and Mental Illness vii (1982).
55. Jordan, *supra* note 31, at 2, col. 1.
56. *Beyond the Blues*, *supra* note 39 (One such group, Depression after Delivery, was started by Nancy Berchtold, a mother who had suffered psychotic episodes, but fortunately had not acted on them.). *See also* Toufexis, *supra* note 4, at 83 (This group now has fourteen chapters across the country.).

II. Historical Background

Postpartum illness has been recognized for centuries. "The first description of postpartum mental illness comes from the fourth century, B.C., by Hippocrates."[57] Other ancient healers including Celsius, Galen and Soranus recorded cases of postpartum illness, and specifically postpartum psychosis.[58] Hippocrates wrote that postpartum illness was "a kind of 'madness', caused by excessive bloodflow to the brain."[59] This was the accepted medical theory for the next two thousand years.[60] In the Middle Ages, the common belief was that the mother's body was occupied by evil demons.[61] During the Victorian era, the postpartum period was considered a time of mystery, and women were often "hidden away" for the first few months following delivery.[62]

In the nineteenth century, postpartum disorders resurfaced due partly to the work of a French physician, Esquirol.[63] In the mid-nineteenth century, what is claimed to be the most comprehensive literature on postpartum disorders was published by the Marcé Society.[64]

After the nineteenth century resurgence, the illness once again was ignored.[65] Despite centuries of recognition, the early twentieth century psychoanalysts felt postpartum illnesses did not fit neatly into the categories[66] and the American Psychiatric Association declassified the disorder in its diagnostic manual.[67] However, the lack of acknowledgment did not make the illness go away.

In the mid-1960's, Dr. James Hamilton published *Postpartum Psychiatric Problems*, in the hope that the disorder would again be recognized and reclassified.[68] Recognition has, however, been slow. Attention to the disorder resurfaced only in the last ten years.[69] Much of this recent attention has been due to the use of postpartum psychosis as a legal defense.

III. Comparison to PMS

Postpartum psychosis defenses may be compared to the simi-

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57. C. Dix, *supra* note 7, at 37.
58. R. Norris & C. Sullivan, *supra* note 28, at 154.
59. D. Lynch-Fraser, *supra* note 24, at 9.
60. C. Dix, *supra* note 7, at 37.
61. D. Lynch-Fraser, *supra* note 24, at 9.
62. *Id.*
63. C. Dix, *supra* note 7, at 37.
64. *Id.* at 38.
65. *Id.* at 39.
66. Hamilton, *supra* note 39, at 1.
67. *See supra* notes 38-40 and accompanying text.
68. C. Dix, *supra* note 7, at 39.
69. *Id.* at 39-40.

lar Premenstrual Syndrome (PMS) defense used recently. While there are a number of similarities, the postpartum psychosis defense differs significantly so that it may succeed, where the PMS defense has failed.

First, it is important to distinguish postpartum psychosis from postpartum depression, since it is the psychosis which is usually offered as a defense. Postpartum psychosis and PMS are similar in that both occur only in women. Due to the cyclical nature of PMS, its diagnosis is much easier[70] than that of postpartum psychosis, which occurs only after childbirth. Postpartum psychosis and PMS are also similar in that the prevailing causation theories recognize them as hormonal based.[71] There is also evidence to suggest a link between postpartum disorders and PMS. A postpartum disorder "apparently accelerates or exacerbates the development of [PMS] or is part of the mechanism that produces PMS."[72] One study involved a group of women without PMS. After pregnancy, sixty-eight percent of the women who experienced a postpartum depression later developed PMS.[73]

In Europe, the use of the PMS defense has had some success. France allows its use as a temporary insanity defense[74] while England and Canada have considered PMS a mitigating factor in sentencing.[75] The United States, however, has not accepted the PMS defense.[76] The main reason the PMS defense has failed in the United States is that it is thought not to conform to the basis of the insanity defense. All of the insanity defenses, *M'Naughten*, *Durham*, "substantial capacity" and "irresistible impulse" require the defendant to establish a mental disease or defect.[77] "The belief that menstruation is a source of mental illness . . . has long since dissipated."[78] Despite recent studies of PMS, it has not been established as a disease of the mind.[79] The more prevalent view is that "PMS is not a disease or defect of the mind, but a physiologi-

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70. Comment, *Premenstrual Syndrome as a Criminal Defense: The Need for a Medico-Legal Understanding*, 15 N.C. CENT. L. REV. 246, 253 (1985).

71. R. NORRIS & C. SULLIVAN, *supra* note 28, at 3.

72. *Id.* at 151.

73. *Id.* at 155.

74. DiGennaro. *Sex-Specific Characteristics as Defenses to Criminal Behavior*, 6 CRIM. JUST. J. 187, 190 (1983).

75. DiLiberto, *Premenstrual Stress Syndrome Defense: Legal, Medical and Social Aspects*, 33 MED. TRIAL TECH. Q. 351 (1987).

76. *Id.* at 352.

77. Recent Decisions, *Criminal Law - Premenstrual Syndrome: A Criminal Defense* 59 NOTRE DAME L. REV. 253, 264 (1983) [hereinafter Recent Decisions].

78. Note, *Battered Woman's Syndrome and Premenstrual Syndrome: A Comparison of Their Possible Use as Defenses to Criminal Liability*, 59 ST. JOHN'S L. REV. 558, 578 (1985).

79. R. NORRIS & C. SULLIVAN, *supra* note 28, at 274.

cal disorder."[80] There is also no scientific evidence that a psychosis can result solely from PMS.[81]

Since PMS has failed to establish itself as a mental disease or defect, it has failed as an insanity defense in the United States. However, an alternative basis on which PMS may succeed, is the diminished capacity defense.[82] Diminished capacity is invoked when a crime requires a specific intent. PMS may allow a woman to prove she did not possess the requisite intent.[83] The use of a diminished capacity defense is not as helpful as an insanity defense since the defendant is not exculpated, but only charged with a lesser crime.[84] A major distinction between the insanity and diminished capacity defenses is that insanity often results in treatment, while diminished capacity results in sentencing.[85]

Another defense which PMS victims may raise is automatism.[86] Automatism is a non-insane defense,[87] sometimes called unconsciousness, which is "the state of a person, who, though capable of action, is not conscious of what [she] is doing."[88] Automatism is recognized as an affirmative defense in some American jurisdictions.[89] While a defense of insanity often results in commitment to a mental institution[90] and the diminished capacity defense leads to conviction of a lesser charge,[91] a successful automatism defense leads to acquittal and release.[92]

Although PMS has failed in this country as an insanity defense, it does not follow that the postpartum psychosis defense would also fail. While PMS has not been proven to be a mental disease or defect, postpartum *psychosis*, by its own terms, is a mental disease. The conditions may be distinguished in that PMS is a "hormone deficiency disease"[93] and postpartum psychosis is a psychosis due to a hormonal deficiency or fluctuation.[94] Therefore, where PMS has failed, postpartum psychosis may succeed. It also follows that where PMS may be a successful defense, for example

80. Recent Decisions, *supra* note 77, at 264.

81. Note, *Premenstrual Syndrome as a Defense in Criminal Cases*, 1983 DUKE L.J. 176, 177.

82. *Id.* at 177.

83. *Id.*

84. *Id.* at 177-78.

85. Comment, *supra* note 70, at 263.

86. *Id.*

87. R. NORRIS & C. SULLIVAN, *supra* note 28, at 275.

88. Comment, *supra* note 70, at 263-64.

89. *Id.* at 264.

90. Recent Decisions, *supra* note 77, at 265.

91. *See* Note, *supra* note 81, at 177-78.

92. Recent Decisions, *supra* note 77, at 265.

93. W. LAFAVE & A. SCOTT, CRIMINAL LAW § 4.9, at 383 n.12 (2d ed. 1986).

94. *See* D. LYNCH-FRASER, *supra* note 24, at 9.

in diminished capacity and automatism, postpartum psychosis would also succeed.[95]

IV. Postpartum Psychosis and the Law

In the past, the law has recognized menstrual disorders as defenses for various criminal acts.[96] Perhaps the most significant development in the law related to postpartum psychosis was England's adoption of the Infanticide Act of 1938.[97] This Act recognizes postpartum psychosis, and arguably includes postpartum depression.[98] The Act provides that where a woman kills her child within one year of birth, but at the time "her mind was disturbed by reason of her not having fully recovered from the effect of giving birth", she is charged with infanticide, not murder.[99] Infanticide is punishable as if the mother had been convicted of manslaughter,[100] which is punishable by up to life imprisonment.[101] The Act also provides that upon indictment for murder, a jury may, in the alternative, find the mother guilty of infanticide or may return a verdict of not guilty by reason of insanity.[102]

Under the Infanticide Act, the only requirement is to show that a mental imbalance occurred in the mother as a result of giving birth.[103] The Act implies a causal link between the mental im-

95. *See infra* text accompanying notes 169-200 for an analysis of postpartum psychosis under various types of defenses.

96. R. Norris & C. Sullivan, *supra* note 28, at 270.

97. Infanticide Act, 1938, 1 & 2 Geo. 6, ch. 36. The Act states:

> (1) Where a woman by any wilful act or omission causes the death of her child being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, notwithstanding that the circumstances were such that but for this Act the offence would have amounted to murder, she shall be guilty of felony, to wit of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child.
>
> (2) Where upon the trial of a woman for the murder of her child, being a child under the age of twelve months, the jury are of opinion that she by any wilful act or omission caused its death, but that at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then the jury may, notwithstanding that the circumstances were such that but for the provisions of this Act they might have returned a verdict of murder, return in lieu thereof a verdict of infanticide.
>
> (3) Nothing in this Act shall affect the power of the jury upon an indictment for the murder of a child to return a verdict of manslaughter, or a verdict of guilty but insane . . . .

98. Trigoboff, *supra* note 5, at 1, col. 4.

99. Infanticide Act, 1938, 1 & 2 Geo. 6, ch. 36.

100. *Id.*

101. *Id.* (See notes following the Infanticide Act.).

102. *Id.*

103. Parker & Good, *Infanticide*, 5 Law & Hum. Behav. 237, 238 (1981).

balance and the infanticide.[104] The defendant, therefore, need only prove the imbalance. The premise of the Act is that there is no reason a mental illness resulting from childbirth should lead to a different legal result than other mental illnesses.[105] Hong Kong has also recognized infanticide, which arises from mental disturbances caused by childbirth, and has adopted a law virtually identical to the English Act.[106]

While there is no infanticide statute in America, postpartum disorders are not unrecognized at law. In two separate child custody cases each court noted that each mother experienced postpartum psychosis following the birth of a child, but recovered.[107] Both cases involved expert testimony by psychiatrists. If the courts are willing to recognize postpartum psychosis as an illness when determining child custody, it would seem reasonable for them to recognize it as an illness constituting a defense in criminal cases.

There are no reported appellate court decisions involving the use of postpartum psychosis as a defense. Most of the trial court opinions have not been appealed, and the few that have been were appealed on other grounds. Estimates of the number of cases in recent years involving a postpartum psychosis defense range from eighteen[108] to thirty-five.[109] One study noted that the decisions have gone both ways, with about one-third of the cases resulting in a verdict of not guilty by reason of insanity.[110]

A. *Postpartum Psychosis*

One of the first cases in recent years to raise postpartum psychosis as a defense was *People v. Thompson*.[111] In August 1983, Angela Thompson drowned her nine-month-old son in the bathtub. She said she heard the voice of God telling her the child was the devil.[112] Angela Thompson had suffered a severe postpartum illness following the birth of her first child, which resulted in hos-

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104. *Id.*

105. *Id.* at 242.

106. Cheung, *Maternal Filicide in Hong Kong 1971-85*, 26 MED. SCI. & L. 185, 191 (1986).

107. Burch v. Burch, 398 So. 2d 84, 86 (La. App. 1981); Pfeifer v. Pfeifer, 131 Cal. App. 2d 123, 124, 280 P.2d 54, 55 (1955).

108. Cox, *Postpartum Defense: No Sure Thing*, NAT'L L. J., Dec. 5, 1988, at 3, col. 1.

109. Katkin, *supra* note 3.

110. *Id.* Katkin is aware of 35 cases over the past four years, 11 of which are still in progress. Of the 24 remaining, one-third resulted in verdicts of not guilty by reason of insanity. Two-thirds resulted in conviction; of those, one-half received probation or up to five years in prison. The other half received more severe sentences, with two cases resulting in life sentences.

111. No. 7995 (Cal. Super. Ct. Yolo County July 30, 1984). *See* Berg, *Criminal Law Notebook, Postpartum Psychosis Defense Gaining*, L.A. DAILY J., Oct. 7, 1988, at 5, col. 1.

112. Toufexis, *supra* note 4, at 81.

pitalization and attempted suicide.[113] After the birth of her second son, Michael, Angela appeared normal until she stopped breastfeeding nine months after the birth. Within days, she experienced depression and hallucinations, which ultimately lead to the death of her second son.[114] Angela had no prior history of mental illness.[115]

Angela Thompson was originally charged with first-degree murder, which was subsequently reduced to manslaughter. Psychiatric evaluations, performed by both sides, concluded that she was insane at the time of the act due to postpartum psychosis.[116] The judge found Angela not guilty by reason of insanity and she spent several months in a mental hospital.[117]

Later, Angela became pregnant again, despite birth control. Under court ordered medical care, she was monitored closely and treated with hormones following the birth, and experienced no recurrence of psychosis.[118]

A few years after *Thompson,* a similar case arose with different results. Sharon Comitz dropped her one-month-old son into a stream, and later reported he had been kidnapped.[119] She had no recollection of the event and remembered it only through hypnosis.[120] She was charged with murder.

Sharon plead guilty but mentally ill to third-degree murder, believing she would only be sentenced to three to five years.[121] The trial court found Sharon not severely mentally disabled and sentenced her to eight to twenty years.[122] She appealed the sentence and her attorney is still trying to have her sentence reduced.[123]

It is unclear from the facts of the case whether there was ever a diagnosis of postpartum psychosis or any other mental illness as a basis for the guilty but mentally ill plea.[124] However, medical records did disclose that Sharon had suffered from postpartum depression after the birth of her first child.[125] She felt she had suf-

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113. Telephone interview with Jeff Thompson, husband of Angela Thompson (Mar. 23, 1989).

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. Jordan, *supra* note 31, at 2, col. 1. (Due to Angela's background as a nurse and her husband Jeff's position as a law enforcement lobbyist, the couple now seek to promote awareness of the illness and its use as a defense.).

119. Commonwealth v. Comitz, 365 Pa. Super. 599, 601, 530 A.2d 473, 474 (1987).

120. *Beyond the Blues, supra* note 39.

121. *Id.*

122. *Comitz,* 365 Pa. Super. at 602, 530 A.2d at 474.

123. Telephone interview with Attorney Peter Goldberger (Mar. 22, 1989).

124. *Comitz,* 365 Pa. Super. at 602-03, 530 A.2d at 474-75.

125. *Id.* at 602, 530 A.2d at 474.

fered a psychotic episode.[126]

One of the most widely publicized cases involving postpartum psychosis was *People v. Massip.*[127] Sheryl Massip threw her six-week-old son in front of a car and when that failed, ran over him with her own car, then placed the body in a garbage can.[128] Sheryl pled not guilty by reason of insanity.[129] Three psychiatrists testified at trial that she suffered from postpartum psychosis.[130] The jury found her guilty of second-degree murder.[131] The judge, however, found her insane and entered a judgment notwithstanding the verdict, acquitting Sheryl.[132] An appeal is pending.[133]

At the same time Sheryl Massip was acquitted by the judge, a New York jury acquitted Ann Green, finding her not responsible by reason of mental defect.[134] In *People v. Green*,[135] Ann Green, a pediatric nurse, was charged with two counts of intentional murder in the death of her daughter in 1980 and her son in 1982, and one count of attempted murder of her son in 1985.[136] She claimed her actions were due to postpartum psychosis.[137] Prior to her arrest, Ann Green was voluntarily sterilized.[138] She was ordered to have psychiatric evaluation on an outpatient basis, following her acquittal.[139]

A number of other defendants have used the postpartum psychosis defense. In *People v. Householder*,[140] the defendant hit her two-week-old daughter in the head with a rock and then threw the body into a nearby river.[141] She used the postpartum psychosis defense to plead guilty to a lesser charge of involuntary manslaughter.[142] This case drew criticism even among proponents of the defense, who felt the existence of mental illness in this case was questionable.[143]

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126. *Beyond the Blues*, *supra* note 39.
127. No. C-64940 (Cal. Super. Ct. Orange County Dec. 23, 1988). *See* Berg, *supra* note 111, at 5, col. 1.
128. Moss, *supra* note 4, at 22.
129. Berg, *supra* note 111, at 5, col. 1.
130. Moss, *supra* note 4, at 22.
131. Moss, *Postpartum Psychosis Defense Succeeds*, A.B.A.J., Feb. 1989, at 40.
132. Telephone interview with Attorney Milton Grimes (Mar. 23, 1989); *see* Toufexis, *supra* note 4, at 83.
133. Telephone interview with Attorney Milton Grimes (Mar. 23, 1989).
134. Cox, *supra* note 108, at 24, col. 1.
135. No. 1273/86 (N.Y. Sup. Ct. N.Y. County Sept. 30, 1988).
136. Zeldis, *supra* note 29, at 1, col. 1.
137. Berg, *supra* note 111, at 5, col. 1.
138. Zeldis, *supra* note 29, at 1.
139. Cox, *supra* note 108, at 3, col. 1.
140. No. 86F6 (Jefferson County Cir. Ct. W. Va. Jan. 21, 1987).
141. Trigoboff, *supra* note 5, at 1, col. 4.
142. *Id.*
143. *Id.*

In *People v. Penguelly*,[144] the defendant was accused of dropping her five-month-old daughter off a pier.[145] She used postpartum psychosis as a factor in both plea bargaining and sentencing. She plead guilty to voluntary manslaughter. She was sentenced to four years in the psychiatric ward of the state prison.[146]

Another case that involved the defense is *People v. Molina*.[147] Stephanie Molina was convicted by a jury of second-degree murder, but the California Court of Appeals reversed the conviction on grounds unrelated to the postpartum psychosis defense.[148]

In a Michigan case, *People v. Wing*,[149] Patricia Wing was charged with second-degree murder.[150] She had dropped her child into a local river and later reported him kidnapped. After psychiatric evaluation, she was acquitted on the basis of insanity, due to postpartum psychosis, and was committed to a mental facility for sixty days.[151]

In *Commonwealth v. Dacri*,[152] the mother pled guilty to open murder and has been sentenced to life imprisonment. At trial, the defense of diminished capacity was offered. This was based on a diagnosis that defendant suffered a borderline personality disorder with severe depression that regressed into a postpartum psychotic episode. Post-trial motions have been filed and an appeal is likely.[153]

While these are only some of the recent cases involving the defense, the decisions finding insanity clearly establish this as a viable defense. Although all of these cases involved postpartum psychosis, a smaller number of cases propose postpartum depression as a defense.

B. *Postpartum Depression*

While the defense is predicated on postpartum psychosis, there is some case law to support the use of postpartum depression as a basis for an insanity defense. In *State v. White*,[154] the defendant was charged with voluntary manslaughter in the death of her

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144. No. 85667 (Cal. Super. Ct., San Diego County June 6, 1989).

145. Cox, *supra* note 108, at 3, col. 1.

146. Telephone interview with Attorney Don Levine's office (Sept. 21, 1989 and Mar. 22, 1989).

147. 88 Daily Journal D.A.R. 9550 (July 25, 1988); *see* Berg, *supra* note 111, at 5, col. 1.

148. Berg, *supra* note 111, at 5, col. 1.

149. No. 84-53731 (Ingham County Cir. Ct., Mich. Sept. 9, 1985).

150. *Id.*

151. *Id.*

152. No. CP8902-1173-1182 (Phila. County C.P. Ct. Pa. July 13, 1989).

153. Telephone interview with Attorney Samuel C. Stratton (Sept. 29, 1989).

154. 93 Idaho 153, 456 P.2d 797 (1969).

three-month-old child. Psychiatric testimony stated that the birth of a second child eleven months after the first child aggravated an existing condition of postpartum depression. The defendant in this case was acquitted on an insanity defense.[155]

In *Clark v. State*,[156] the defendant was charged with attempted murder after wrapping her two-week-old child in a blanket and abandoning it on the side of the road. The defendant pled not guilty and not guilty by reason of insanity. The defendant was held to have the burden of proving insanity in this case. Two psychiatrists and one psychologist testified as expert witnesses that defendant suffered from a severe postpartum depression. Despite this, the jury found defendant sane and convicted her.[157] The outcome may have been different, however, in a jurisdiction where the state has the burden of proving sanity, once the defendant raises the issue of insanity.

In *State v. Holden*,[158] the defendant killed her three-month-old child by throwing her into a pond. Defendant was convicted of second-degree murder; however, a diagnosis of postpartum depression was a mitigating factor considered in sentencing.[159]

In *People v. Gentile*,[160] the defense attorney is attempting to use postpartum depression as a basis for an insanity defense. The defendant is charged with second-degree murder for drowning her two-month-old child in the bathtub and then placing him in a garbage can.[161] Psychiatric evaluations did not find postpartum psychosis but rather, severe postpartum depression. This was defendant's second child, and she had suffered some depression, though not as severe, following the birth of her first child.[162]

In light of the case law it appears there exists a significant basis for the establishment of a postpartum psychosis defense. The issue then is whether postpartum psychosis should be recognized as a separate defense or as a category under an existing insanity defense.

V. The Birth of a New Defense or the Adaptation of an Old Defense

In the view of one prosecutor, postpartum psychosis is not a

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155. *Id.* at 154, 456 P.2d at 798.
156. 95 Nev. 24, 588 P.2d 1027 (1979).
157. *Id.* at 27, 588 P.2d at 1029.
158. 321 N.C. 689, 365 S.E.2d 626 (1988).
159. *Id.* at 693-94, 365 S.E.2d at 628.
160. No. 3967-88 (N.Y. Sup. Ct. Kings County Dec. 1988).
161. Telephone interview with Attorney John DePaola (Mar. 22, 1989).
162. *Id.*

new defense: "It's just giving the insanity defense a new label."[163] There is, however, some support for a separate postpartum psychosis defense, similar to the Infanticide Statute in England.[164] Proponents of a separate defense think that since motherhood and childbirth are emphasized by society as a special event, there should be a statute protecting victims of the hormonal imbalance that may result from child birth.[165] Dr. Hickman, psychologist and director of a postpartum clinic, argues that victims of postpartum psychosis have more urgent needs than those suffering from other mental illnesses and should receive special consideration.[166] Proponents of the statute do recognize the potential for abuse of the defense.[167]

There is much opposition in the legal community to the development of a separate defense. The prosecutor in *Massip* recognized the existence of postpartum psychosis but argued that it should not be a separate defense given the same weight as the insanity defense.[168] While a separate defense may be developed in the future, possibly due to continued lobbying for such a statute, it does not appear that a separate defense will be available in the near future. It is generally believed that existing insanity or diminished capacity defenses are sufficient.

There are presently four tests for an insanity defense. Whether postpartum psychosis can form the basis of an insanity defense depends on the test applied by the particular jurisdiction, the facts of each case, and who has the burden of proof. The theory of criminal law is to punish those who commit morally culpable acts.[169] However, the law recognizes that defendants who are insane are not responsible for their actions.[170] The purpose of the insanity defense is not to allow defendants to go free, but rather to separate them from the criminal justice system and provide them with necessary medical treatment.[171]

The most widely used insanity test is *M'Naughten*.[172] Under this standard, a defendant is held to be insane and:

> not criminally responsible if, at the time of committing the act, he was laboring under such a defect of reason, from disease of the

163. Berg, *supra* note 111, at 5, col. 1.
164. Jordan, *supra* note 31, at 2, col. 1.
165. *Id.*
166. *Id. See* Hickman, *supra* note 18.
167. Jordan, *supra* note 31, at 2, col. 1 (Proponents recognize the need for exclusion of the defense in cases involving a history of mental illness, criminal acts and child or drug abuse.).
168. Trigoboff, *supra* note 5, at 1, col. 4.
169. Recent Decisions, *supra* note 77, at 263.
170. *Id.*
171. W. LAFAVE & A. SCOTT, *supra* note 93, § 4.1, at 304.
172. *Id.* § 4.2, at 310.

> mind, as not to know the nature and quality of the act he was doing, or if he did know it that he did not know what he was doing was wrong.[173]

"[D]isease of the mind" has never clearly been defined.[174] Some psychiatrists feel, under *M'Naughten*, that insanity may only flow from forms of psychosis which produce the lack of cognition required under this test.[175] Psychiatrists may testify as to whether they believe the defendant had the requisite knowledge.[176]

Some medical experts believe — a belief substantiated by the stories of women suffering postpartum psychosis — that these women have no knowledge of what they are doing or that their actions are wrong. This belief under the *M'Naughten* test, if postpartum psychosis is established, should be sufficient to find the defendant insane.

The *Durham* rule, or Product Test, is a broader test of insanity than *M'Naughten*.[177] Under this standard, the defendant "is not criminally responsible if his unlawful act was the product of mental disease or defect."[178] This is the most easily met standard for an insanity defense. It only requires a mental disease/defect (postpartum psychosis) and a showing that the disease/defect was the reason for the mother's act. Since it is unbelievable that a sane mother would kill her child and the psychosis often results in hallucinations or voices telling the mother to act, it should be relatively easy to prove she acted as a result of the psychosis.

The Irresistible Impulse Test is often coupled with the *M'Naughten* test for insanity.[179] This test finds the defendant insane if the "defendant had a mental disease which kept [her] from controlling [her] conduct," even if [s]he knew what [s]he was doing and that it was wrong.[180] While the test is called "irresistible impulse," this term is rarely included in jury instructions. Instead, the jury is instructed on the capacity for self-control and free choice.[181] This standard would allow the postpartum psychosis victim, who is aware of her actions, realizes the wrongfulness of her actions, but is unable to stop, to use the insanity defense.

The insanity test proposed by the Model Penal Code, and used in Michigan, is what is known as the Substantial Capacity

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173. *Id.*
174. *Id.* at 312.
175. *Id.*
176. *Id.* at 320.
177. *Id.* § 4.3, at 324.
178. *Id.*
179. *Id.* § 4.2, at 320.
180. *Id.*
181. *Id.* at 321.

Test.[182] The test is a combination of *M'Naughten* and the Irrestible Impulse Test and states that "[a] person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality . . . of his conduct or to conform his conduct to the requirements of the law."[183] The significant distinction of this test is that it requires only a lack of substantial capacity rather than a lack of cognition as required by *M'Naughten*.[184]

Under this standard, the postpartum psychosis defense should succeed rather easily; the defendant need only establish the existence of the psychosis which caused the lack of substantial capacity to understand or control their actions. In virtually every case of postpartum psychosis, the woman states she had no knowledge or real understanding of her actions, and often no ability to control them.

If insanity is established under the test required by a jurisdiction, the verdict is not guilty by reason of insanity. While some jurisdictions mandate commitment following this verdict, the majority of jurisdictions order commitment only when it is shown that the defendant is still insane or dangerous.[185] This is an important alternative in postpartum psychosis cases. Often, by the time of trial, the mother has fully recovered from the psychosis. In some cases, however, effects of the psychosis linger and psychiatric treatment would be helpful to prevent recurrence.

A minority of states have statutorily created the verdict of guilty but mentally ill.[186] Sentencing under this verdict is no different than if the defendant had been found guilty. Treatment, however, is different. Prior to serving the sentence, the defendant receives psychiatric evaluation and, if treatment is needed, is placed in a mental health facility, rather than in jail or prison.[187]

This verdict is contrary to the theory of the insanity defense, but is a compromise satisfying the belief that while these people should pay for their actions, they should also receive treatment. While this verdict would not release a postpartum psychosis victim from responsibility for acts over which she had no control, it does help to ensure psychiatric treatment.

There are two other defenses in which postpartum psychosis may apply, the diminished capacity and automatism defenses. While a defendant's mental illness may not be sufficient for an in-

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182. *Id.* § 4.3, at 329. *See* 1 MICH. C.J.I. § 7:8:01, at 7-107.

183. W. LAFAVE & A. SCOTT, *supra* note 93, § 4.3, at 329.

184. *Id.* at 330.

185. *Id.* § 4.6, at 360.

186. *Id.* § 4.5, at 359.

187. *Id.*

sanity defense, it may be a factor in determining guilt. Under the diminished capacity defense, the defendant's mental condition may be evidence of whether the defendant had the requisite mental state for the crime charged.[188] A successful diminished capacity defense does not result in an acquittal. Rather, the defendant may be convicted of a lesser offense, resulting in a shorter sentence.[189] If postpartum psychosis were to fail under an insanity test, it might be sufficient to show diminished capacity to reduce the charge. Postpartum depression might also be used in this context.[190]

Automatism, or unconsciousness, allows a not guilty verdict if the defendant acted in a state of unconsciousness or semi-unconsciousness.[191] The basis of the defense is that the defendant did not act voluntarily.[192] Automatism is defined as "the state of a person who, though capable of action, is not conscious of what [s]he is doing. It is . . . equated with unconsciousness, involuntary action [and] implies that there must be some attendant disturbance of conscious awareness."[193] Although this defense is not widely used, there are cases where it has been successful.[194] The majority view in these cases requires the defendant merely to raise some doubt regarding her consciousness at the time of the act.[195] If successful, the defense results in acquittal.[196]

There is a potential for the defenses of postpartum psychosis and possibly postpartum depression to succeed under automatism. Much would depend on the definition of unconsciousness. In postpartum psychosis cases, some women have no recollection of their acts, indicating unconsciousness.[197] Other women report being conscious of the event, but having no control over their actions. In *Massip* acquittal was on the basis of insanity,[198] but unconsciousness was presented as an alternate defense.[199] The defense is allowed in California on the basis of unsound mental condition.[200]

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188. *Id.* § 4.7, at 368.

189. *Id.* at 369.

190. Jordan, *supra* note 31, at 2, col. 1.

191. W. LaFave & A. Scott, *supra* note 93, § 4.9, at 382.

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.* at 384.

196. *Id.*

197. *Beyond the Blues*, *supra* note 39 (Sharon Comitz, who dropped her child into a stream, had no recollection of the event until undergoing hypnosis after her arrest.); *see* Toufexis, *supra* note 4, at 83.

198. Berg, *supra* note 111, at 5, col. 1.

199. Telephone interview with Attorney Milton Grimes (Mar. 23, 1989).

200. 1 Cal. C.J.I. 4.30 (1979 & Supp. 1987). The instructions provide:

A person who commits what would otherwise be a criminal act, while uncon-

Michigan is an ideal state for the development of a postpartum psychosis defense, with virtually every alternative defense available. First, Michigan uses the substantial capacity test for insanity.[201] As discussed earlier, this only requires a showing by the defendant of lack of substantial capacity to know what they were doing was wrong, or lack of ability to conform their actions to what was legally required.[202] Michigan defines mental illness as "a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or the ability to cope with the ordinary demands of life."[203] Under this definition postpartum psychosis should qualify as a mental illness. Further, Michigan places the burden of proving sanity on the state once the defendant introduces evidence tending to show insanity.[204]

Michigan also recognizes temporary insanity.[205] The jury is instructed that insanity may be permanent, temporary or intermittent.[206] This aids a postpartum psychosis defense because the psychosis often occurs only for brief periods and is temporary, ceasing as the mother's hormone level returns to normal and menstruation returns. Alternatively, the diminished capacity defense is available in Michigan[207] as is the verdict of guilty but mentally ill.[208] It is also possible that the defense of automatism might succeed.

While Michigan may be more likely to recognize the postpartum psychosis defense, it should succeed in other states as well. Postpartum psychosis is a mental illness, thereby satisfying the necessary element of every insanity defense. The facts of each case and the insanity test in the applicable jurisdiction must be taken into account. If it is not recognized as an insanity defense, postpartum psychosis should certainly be successful under one of the alternative defenses discussed. Postpartum depression may also prove a viable defense in some jurisdictions. Medical recognition and acceptance are also factors in the development of this defense. Until acceptance and awareness increase, postpartum psychosis may be a factor in plea bargaining and in mitigating sentences.

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scious, is not guilty of a crime.

This rule of law applies to persons who are not conscious of acting but who perform acts while asleep or while suffering from a delirium of fever, or because of an attack of [Psychomotor] epilepsy, a blow on the head, the involuntary taking of drugs or the involuntary consumption of intoxicating liquor, or any similar cause.

Unconsciousness does not require that a person be incapable of movement.

201. 1 MICH. C.J.I. § 7:8:02A, at 7-118A-B (Supp. 1983).

202. *See supra* text accompanying notes 182-84.

203. 1 MICH. C.J.I. § 7:8:02A, at 7-118A (Supp. 1983).

204. *Id.*

205. *Id.* § 7:8:12, at 7-137 (1977).

206. *Id.*

207. *Id.* § 6:1:02A, at 6-8A (Supp. 1985).

208. *Id.* § 7:8:09, at 7-131 (1977).

VI. Obstacles to Ratification of the Defense

A number of factors may hinder the recognition of postpartum psychosis as a defense. One of the most important is the reluctance of many in the legal community to accept the defense. The prosecutor in *Massip* felt that while postpartum psychosis exists, it should not allow its sufferers to escape liability for their actions.[209] In *Green*,[210] a great deal of psychiatric testing was done because the state was reluctant to accept this defense.[211] Many are reluctant to accept the insanity defense because these women often report their children kidnapped. This is viewed as an indication that they knew what had happened, and is often introduced as evidence of premeditation.[212] According to experts on the disease, the reports of kidnapping are part of the illness.[213] These women have no idea what took place, all they know is that their child is missing.

Another major factor in cases involving postpartum psychosis is the emotional impact on the jury. The death of an innocent baby is viewed as a tragedy by society. Defense attorneys are often concerned that juries will be overcome by passion and sympathy for the infant.[214] While it is possible the jury may feel sympathetic toward the mother,[215] it is more likely that a successful defense will require a great deal of evidence to overcome the jury's sympathy for the child.[216] Because the psychosis is temporary, the jury may be skeptical, believing the mother is making up a story to explain her actions.[217]

A major obstacle to this defense is proving that the psychosis existed at the time of the crime. Often it is weeks, or months, after the crime before the mother receives any psychological evaluation. One effort to solve this problem is a California task force established to assist victims of the illness as soon as they come in contact with law enforcement agencies.[218] The task force is attempting to educate law enforcement officials and others to recognize the illness. They are also seeking to build it into the framework of the mental health program to provide treatment.[219] Through early recognition, evaluation and treatment, it will be easier in the future to

209. Trigoboff, *supra* note 5, at 1, col. 4.
210. *See supra* note 135 and accompanying text.
211. Telephone interview with Attorney Michael Dowd's office (Mar. 23, 1989).
212. *Id.*
213. Hickman, *supra* note 18.
214. Moss, *supra* note 4, at 22.
215. Cox, *supra* note 108, at 3, col. 1.
216. Berg, *supra* note 111, at 5, col. 1.
217. *Id.*
218. Telephone interview with Carla Anderson, Sen. Presley's Chief of Staff (Mar. 22, 1989) (The task force was established by Sen. Robert Presley-D, Riverside, Cal.).
219. *Id.*

establish the mental state of the mother at the time of the act.

Other concerns are properly raised in the adoption of this defense. There is a fear of abuse.[220] It is also reasonable to assume that the feminist opposition to the PMS defense[221] will surface here. The lack of medical awareness and acceptance and the various causation theories make it more difficult to recognize this disorder and to establish it as a mental illness or defect at trial. The fact that the defense's success is at the trial level and rarely reported or appealed, makes it difficult to establish legal precedent.

VII. EFFECT ON THE FAMILY

While emphasizing the legal aspects of this illness, its effects on the family should not be overlooked. Whatever the legal result, the family members involved have to cope with what has occurred. If the postpartum illness does not result in infanticide, it can interfere substantially with the bonding process between mother and child.[222] For some women, the disease shatters their daily existence.[223]

The illness also affects the spousal relationship. Despite their grief, most husbands remain supportive of their wives.[224] Sharon Comitz' husband has remained supportive throughout the ordeal and her prison sentence, fighting hard to have her sentence reduced.[225] Jeff and Angela Thompson experienced marital difficulty, but worked through it, and now work together to promote awareness of the illness.[226] The result in *Massip* was sadly different. Sheryl's husband testified for the prosecution and when asked if he loved his wife, he responded "[r]ight now, no."[227] Glenn Comitz best described the effect on the family this way: "The disease itself is a monster. It comes from nowhere and takes the thing that is closest to you and doesn't look back."[228]

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220. Zeldis, *supra* note 29, at 1, col. 1.

221. Recent Decision, *supra* note 77, at 263.

222. Lee, *supra* note 6, at 287.

223. NORRIS & SULLIVAN, *supra* note 28, at 151.

224. Toufexis, *supra* note 4, at 83.

225. Trigoboff, *supra* note 5, at 1, col. 4.

226. Telephone interview with Jeff Thompson (Mar. 23, 1989); *see supra* notes 111-18 and accompanying text.

227. Trigoboff, *supra* note 5, at 1, col. 4.

228. *Beyond the Blues*, *supra* note 39 (Glenn Comitz is the husband of Sharon Comitz.).

VIII. CONCLUSION

Postpartum psychosis is a very real illness. The issue is whether it should exculpate a mother from criminal responsibility for infanticide. If, due to postpartum psychosis, the mother acted without knowledge or control, she should be excused from responsibility. This would conform to the purpose of the insanity defense.

A number of steps must be taken in order to advance the acceptance of postpartum psychosis as a defense. First, it must be recognized that postpartum psychosis and postpartum depression are distinct illnesses. The proper use of these terms will help to further understand the illnesses, and lead to less ambiguity. Further, the medical field should reclassify postpartum disorders and seek to promote an understanding of these disorders by medical and legal professionals.

This Comment proposes that postpartum psychosis should be accepted as a defense. At least, the illness should be recognized as a sufficient mental disease or defect to satisfy that portion of any of the insanity tests. The specific facts of each case and the test applied in the appropriate jurisdiction may then be examined to establish the balance of the test for insanity. Should the specific facts of a case fail to meet an insanity test, the defense of diminished capacity or automatism should be allowed as alternatives. In appropriate situations, severe postpartum depression should also be considered as a basis for insanity.

Finally, the postpartum psychosis defense should be recognized as unique. It should not be abused by those who do not suffer from postpartum psychosis. Because of the tragic nature of these cases, treatment should be provided in all situations. One thing appears certain, as medical knowledge and public awareness increase, so too will the acceptance of postpartum psychosis as a defense.

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