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## MOTHERS WHO KILL THEIR CHILDREN

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By Stuart S. Gordan<sup>1</sup>

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### INTRODUCTION

It seemed like Janice<sup>2</sup> had been staring at the inside of her prison door for hours, waiting for it to open. Twirling the waist strings on her uniform. Thinking back to when she and her sister went water-skiing at a friend's summer home. Counting sheep. She has, in fact, been awake since the guard took her metal meal tray away the night before. She has, in fact, barely slept at all since she realized what she did to her little babies the afternoon that she still cannot fully remember. That was months ago, so many she cannot remember when exactly. The pair of handcuffs pulling her wrists behind her back was the first clue that something terribly wrong had happened. Janice had won Future Farmers of America ribbons in high school and was the former office manager who ran Pete's Auto Garage with her junior college degree in her back pocket. She was supposed to be destined for that middle-class suburban nirvana in the sky, not the back seat of a van meandering through screaming protesters outside of the courthouse. And why was it any of their business anyway, Janice thought. Their children are not the ones dead today. They are not the ones unsure of their own sanity. They should be back at home, making dinner for their children or helping them with their homework.

Remember back to the time when you were a young child in the care of your mother. You remember the warmth, the security, the friendliness. The knowledge that no matter where you went, that when you returned at the end of the day your home was the place that made you feel most comfortable. It never even crossed your mind that the gate keeper to your soul, the nurturer of your mind and body would ever purposefully harm you. Doing so would alter the natural order in the world in the same way the moon changes the tides.<sup>3</sup> In reality, statistics

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<sup>1</sup> J.D., University of Tulsa College of Law, 1998; B.A., University of North Carolina at Chapel Hill, 1995. I wish to thank Professor Kathleen Waits for her helpful comments, advice, and encouragement of this article. Also, a thank you to my family for their support and excitement for this project. Copyright 1997-98, Stuart Gordan.

<sup>2</sup> Janice is a fictional character drawn from actual women and their documented experiences. She is married and under arrest for murdering her two children.

<sup>3</sup> Jessica Schorr Saxe, *The Demons Within: Susan Smith's Act is More Common Than We Want to Admit, Even in Our Fairy Tales*, CHARLOTTE OBSERVER, July 25, 1995, at 7A.

show that children are murdered at the hands of their parents more frequently than we imagine. Estimates vary from approximately 600 mothers who kill their children each year in the United States<sup>4</sup> to 2,000 children killed by their parents in 1995.<sup>5</sup> In fact, while the overall murder rate in the United States in 1995 was 10 deaths per 100,000 people,<sup>6</sup> the murder rate for abused or neglected children (not including other methods of murdering children) may have been as high as 11.6 deaths per 100,000 children.<sup>7</sup> A study conducted by the U.S. Department of Justice of 1988 crime statistics found that in murders of children younger than age 12, the parents accounted for 57% of the murderers.<sup>8</sup>

*I never really did like Dan. From the first time mom brought him home to finally meet us, something about the way he touched my shoulder sent shakes throughout my body. Even at such a young and naive age, I still felt something was wrong. But mom seemed so in love with him - or at least very infatuated. She talked on and on about now that she and Dan would be married, her girls would have new clothes, a new school, a new life.*

*It happened a few weeks before the wedding. Dan had already moved all of us into his house. Mom was so excited that both of her girls would have their own rooms, something she never had as a child. Mom and Dan hosted a small party one night, and the sounds of laughter and fun filtered upstairs. Some time in the early hours of the next morning Dan came into my room. At first I thought I was still dreaming, and I thought I heard Dan say something about mom, family, and love. To be honest, I still didn't know if I was asleep or not. But I awakened for sure when I felt Dan's cold hand slip under the covers and up my leg. Even at that very first time, at that very first moment, when I could have been able to yell or scream or run, at that very moment in*

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<sup>4</sup> Laura Griffin, *Complex Factors Frequently Surround 'Unthinkable Act,'* THE DALLAS MORNING NEWS, June 20, 1996, at 1A.

<sup>5</sup> U.S. ADVISORY BOARD ON CHILD ABUSE & NEGLECT, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, *A NATION'S SHAME: FATAL CHILD ABUSE AND NEGLECT IN THE U.S.* xxvi (1995).

<sup>6</sup> *Id.* at 8.

<sup>7</sup> *Id.* at xxv citing P. McClain, et al., R., *Estimates of Fatal Child Abuse and Neglect, United States, 1979 through 1988*, 91 PEDIATRICS 338-343 (1993).

<sup>8</sup> BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, *MURDER IN FAMILIES I* (1994)[hereinafter *MURDER IN FAMILIES*].

*time I knew I wouldn't do anything because I didn't want to hurt my mom.*

People want to believe that parents, especially mothers, would sacrifice themselves for their children. This is demonstrated by media images of motherhood, such as June Cleaver<sup>9</sup> and Mrs. Garrett.<sup>10</sup> When parents kill their children, people within the community often feel betrayed and deceived.<sup>11</sup> "I can honestly say I have never seen Susan Smith mad," said a friend of the South Carolina woman convicted for murdering her two children in 1994; "she had a bubbly personality ... She didn't seem to have a worry in the world."<sup>12</sup> The feeling is that mothers do not betray their children's unconditional love; mothers do not betray the vision neighbors have of their community. That is exactly what Janice did; she betrayed her children as if she were punishing them for every wrong she felt had been unjustly thrown upon her. She kept her younger child's head in the bathtub water as she counted the seconds just as she mentally counted the ways she felt her life was disappointing. Did she know what she was doing? What was she possibly thinking? Was she even thinking at all?

If you take a monster out of the jungle, give it unconditional love and affection, will it remain a monster? If you leave a little girl in her own home but inflict a spoonful of hell upon her, will she become a monster? Maybe, but is that an excuse? An explanation of why? A way of passing the buck? To any of the family's friends, Janice's childhood had to have seemed normal. The family wandered into church on a semi-regular basis. The children participated in school activities. Janice's mother was active in the PTA; the family socialized with other families. Even behind closed doors things seemed fine. To Janice's mother, Dan was a good husband. He earned enough money and was a fine father for her children. But could what he did to Janice on a continual basis for all those years result in what she did to her children in her adult years? Is there a reason for what any one mother does to her children?

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<sup>9</sup> The mother of Beaver Cleaver, played by Barbara Billingsley, in the 1960's television show, *Leave It To Beaver*.

<sup>10</sup> A boarding school housemother from *The Facts of Life*, a 1980's situation comedy.

<sup>11</sup> *Demons Within*, *supra* note 2.

<sup>12</sup> Ricki Morell, *Sweet' Susan Smith Hid a Troubled Side: Killing of Sons a Mystery to S.C. Town*, CHARLOTTE OBSERVER, November 13, 1994, at 1A.

## MOTHERS WHO KILL THEIR CHILDREN

Dravia Price smothered her two infants to death;<sup>13</sup> Tabatha Weaver starved her 2-year-old son to death;<sup>14</sup> Sue Her used a pistol on her infant, her husband, and then herself.<sup>15</sup> There are more than enough examples of mothers killing their children for academics to conduct studies, define different killings, attach names, and find common denominators among the killings. By general consensus, “infanticide” is the term used for child homicides. The term “filicide” is used when the murderer is a parent of the victim and the term “neonaticide” is used when the parent kills the child within his or her first 24 hours of life.<sup>16</sup>

*What a model family. Two cars, three tv's, four pets, and five gold rings. Isn't that what someone would think, what anyone would think if they were suddenly dropped from the sky into my high school graduation party. All weekend, mom was crying, sobbing about how proud she was of the first girl in her family to go to college. Then mom asked me to go inside and help Dan bring out the hamburgers. I hated her when she asked me that. It was like he knew I was coming. It was like he was sitting on the stairs just waiting for me. Before I went into the kitchen, he said he had a present for me. We went upstairs but never did make it into his room. Even with all those people outside, Dan pushed me against the wall. With one hand under my sundress he lifted me off the ground. With the other he stroked the top of my head. My mom wasn't the only one crying that day. How much more of this was I supposed to take?*

Family members, and parents in particular, often use physical methods of murdering family members. The methods often require more personal contact than those that strangers employ in murders they commit. The U.S. Department of Justice survey of 1988 found that 61% of all murder defendants used a firearm as the murder weapon.<sup>17</sup> Firearms are

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<sup>13</sup> Mary Newsome, *When Parents Kill: What Susan Smith is Accused of is Monstrous. But It's Not the Only Gruesome Case, Just the Most Public*, CHARLOTTE OBSERVER, November 7, 1994, at 12A.

<sup>14</sup> *Id.*

<sup>15</sup> *Upset by Infant's Defect, Mother Shoots Him, Kills Husband, Herself*, CHICAGO TRIBUNE, August 13, 1996, at 7.

<sup>16</sup> Phillip J. Resnick, *Child Murder by Parents: A Psychiatric Review of Filicide*, 126 (3) AMER. J. OF PSYCHIATRY 73 (1969).

impersonal and passive. The same survey found that murders within a family, however, were significantly less likely to involve firearms: only 19.6% of those murders were as the result of a firearm.<sup>18</sup> In fact, only five child victims surveyed were shot to death.<sup>19</sup> Instead, active and physical methods that require touch and contact such as beating, shaking, drowning, suffocation, strangulation, stabbing, boiling, poisoning, and using foreign objects were found to be more widely used by a parent murdering a child.<sup>20</sup> A reason for this discrepancy may be that the average criminal is sane and therefore does not want to commit a particularly brutal murder. Perhaps the average criminal would rather shoot from a distance and keep his or her hands clean. One study notes that mothers who kill their children, are not emotionally distanced from their children at the time of killings<sup>21</sup> and that the murders are often the unplanned results of extreme levels of frustration, anger, or depression.<sup>22</sup> This may be a crucial distinction between mothers who kill their children and the average murderer.

## JANICE

Though her fate hangs in the balance, Janice is bored. She drifts in and out, paying attention to only some of what her attorney says. The room seems so big, she thinks. She notices the little carvings in the wood paneling, the state seal, the flags standing at attention, and the courtroom employees staring at her. She imagines what they are thinking. The old lady types on that thing that seems like a typewriter but is not. Janice moves across the faces of the jurors: stoic, unmoving, and unemotional. They have already decided her fate, she thinks, but then hasn't everyone? As the other attorney, the one for the people, starts to talk about the day Janice murdered her children, she thinks back herself. She remembers the morning with light snow outside and bitter cold inside. The alarm beside her bed sounded like the noise a foghorn and a chain saw create when mating, but of course that did not awaken Peter. Janice had to practically push him out of bed on her way to the kids' room.

Janice did not understand why he had to be so mean each morning. If he would only get up himself she would not have to push and roll him

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17 MURDER IN FAMILIES, *supra* note 8, at 4.

18 *Id.* at 4.

19 *Id.* at 6.

20 *Id.* at 6.

21 *Why Do Mothers Kill Their Children?*, USA TODAY (MAGAZINE), Dec. 1, 1996.

22 *Id.*

out of bed. If that would happen, then he would not make his usual sarcastic remark and the morning could begin cordially. Janice then went to the children, but as usual they were uncooperative. By the time Janice had the older child dressed for day care and eating breakfast Peter demanded eggs and bacon or something, anything other than cereal. Like he could not make it himself, Janice thought to herself. So, still unshowered and basically undressed in her bathrobe, she made Peter breakfast. Then she thought, maybe this time he will say thank you, or express his gratitude with a kiss on her cheek on his way out the door. But with a mumbled request for dinner that night, Janice remembers, Peter was out of the house.

Janice's thoughts are interrupted by her attorney telling the jury about that very same morning. Sources of stress, the attorney says, contributed to Janice's emotional breakdown and instability. Family stress, social stress, and psychiatric stress can combine to make a woman as volatile as a soldier charging a hill, her attorney says. Parental maltreatment, sexual abuse, marital discord, financial difficulties, housing problems, and a history of psychiatric symptoms can create a lethal mix. Some sources of stress alone can be quite a problem. One survey found that severe marital discord was present in 58 out of 82 cases (71%) where the mother killed her child.<sup>23</sup>

*I know he sees other women; actually he has never denied it. In fact, he says that the difference between other women and me is like the difference between entertainment and love. To him, entertainment is his relationships with other women, and love is his relationship with me.<sup>24</sup> He thinks that means he has free reign to go out and pick-up women whenever he pleases. But that can't be normal. That can't be how people committed to each other behave. But I can't even discuss it with him. He gets so loud and angry when I ask him where he was all night, or why his clothes smell like a bar room. I find things in his pockets, stains on his clothes. But he shuts me out, doesn't let me say anything. What would my mom do if she were in this situation? Maybe I'll just let things slide for some time. He'll turn around, he'll open up to me.*

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<sup>23</sup> P.T. d'Orbán, *Women Who Kill Their Children*, 134 BRITISH J. OF PSYCHIATRY 560, 563 (1979).

<sup>24</sup> THE UNBEARABLE LIGHTNESS OF BEING (Orion 1988).

Janice did not understand how her marriage went so bad so quickly. Maybe it was related to Peter's job, she thought. He used to earn a nice amount of money, but Janice suspects a current girlfriend and the race track in town took care of some of that. Business had been slow as well, as buyers Peter knew retired or quit, and the replacements did not seem to enjoy conducting business at bars during happy hours.

Janice sat in the courtroom. The dress her attorney brought for her to wear itched. The trees she could see in the courtyard from the courtroom window swayed gently in the wind. At an earlier time in her life, that is how she had hoped she would care for her children, with such care and delicate balance. They were her refuge, she thought, her escape from Peter and the rude check-out clerk. Refuge from the drivers who honk at her for no apparent reason, from the looks the police officers gave her when they found her hiding in her closet. Her children were her release, her safety net. She was going to give this world one new try, and she was going to live her life anew through her children.

*The doctor said there was nothing wrong with me, at least nothing that a good shot of whisky wouldn't cure. I guess he was momentarily blinded by my stomach the size of a small country cottage. I have headaches all day long I told him. Stop watching daytime tv, he said. I feel continually tired, I said. Stop training for a marathon, he joked. I can't sleep, I said. Tell Peter to keep his hands off you, he laughed. My skin is dry and crumbles to the touch, I said. Listen, he said, there is nothing wrong with you but a pregnancy. I tried to tell him that I couldn't go on. I knew there was no way I could be a mother. I had even asked the librarian for a handbook on mothering. I mean, they've got such things for the driver's license test and for preparing tax returns. Why wouldn't they have one for raising newborns? What am I to do when the baby cries? Is it hungry? Tired? What am I supposed to do? But by this time, the doctor was across the office, already flirting with the new receptionist.*

#### **POSSIBLE EXPLANATIONS: WHY DO MOTHERS KILL?**

The "father" of maternal filicide, Dr. Phillip Resnick, initially proposed five reasons why mothers murder their children: (1) for altruistic reasons; (2) because the mother is acutely psychotic; (3) because the child is unwanted; (4) accidentally; and (5) to punish a spouse. He came to this conclusion after reviewing 155 cases on child murder that occurred



between 1751 and 1967.<sup>25</sup> Upon further study in 1970, he added a sixth category, neonaticide, to the list of reasons.<sup>26</sup> Of the murders from his initial study, over two-thirds were committed by mothers,<sup>27</sup> with an overwhelming number of the maternal filicides committed due to altruistic motive.<sup>28</sup>

In the early 1970's, P.D. Scott conducted his own research and concluded that mothers kill their children based on impulses, not because of the motives Resnick hypothesized.<sup>29</sup> Scott distinguished five categories similar to those proposed by Resnick. Scott stated that mothers kill (1) to eliminate an unwanted child; (2) out of mercy; (3) due to aggression attributable to gross mental pathology; (4) because of stimuli arising outside the victim; and (5) because of stimuli arising from the victim.<sup>30</sup> Resnick placed greater emphasis on the defendant's mental state but Scott felt that opinion was flawed, because while some mothers may have the mental inability to deal with daily problems and the capability to murder their children, they may have no impetus to act, react, or murder their children. Scott's categories help to explain how those conditions become manifested into actions. Thus, combining Resnick and Scott's research, there are six means of describing why mothers kill their children: (1) because the child was unwanted; (2) out of mercy; (3) because the mother is mentally ill; (4) in retaliation against a spouse; (5) as a result of abuse; and (6) neonaticide.<sup>31</sup> The techniques used by women to kill their children ranged from passive neglect and active aggression.<sup>32</sup>

Murders committed because the victim was no longer desired by the parent are unwanted child filicides.<sup>33</sup> Unwed mothers, particularly teenagers, possibly account for most of these cases.

Mercy killings occur when the mother acts on her perceptions of the child's suffering.<sup>34</sup> Resnick believed that in such cases of filicide, the suffering may or may not have been actual.<sup>35</sup> Included in this category are

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<sup>25</sup> Resnick, *supra* note 16, at 73. Of the 155 cases, only 131 were considered because 24 children were victims in their first 24 hours of life and had not established a role in the family yet.

<sup>26</sup> d'Orbán, *supra* note 23, at 561.

<sup>27</sup> Resnick, *supra* note 16, at 75.

<sup>28</sup> *Id.* at 77.

<sup>29</sup> d'Orbán, *supra* note 23, at 561.

<sup>30</sup> *Id.* at 560-61.

<sup>31</sup> *Id.* at 561.

<sup>32</sup> *Id.*

<sup>33</sup> Resnick, *supra* note 16, at 78.

<sup>34</sup> d'Orbán, *supra* note 23, at 561.

<sup>35</sup> Resnick, *supra* note 16, at 77.

cases of parents who could not accept their child's handicap; this inability to accept can result in desire for revenge, paranoia, or delusions.<sup>36</sup> Interestingly, while Resnick attributed a high number of maternal filicides to mercy killings, as he described them,<sup>37</sup> Scott found only one such case and placed it under the category of "an uncommon cause."<sup>38</sup>

Mentally ill mothers who kill their children comprise a broad category including all cases of psychotic illness, cases of reactive depression associated with suicidal impulses, and cases of personality disorder with depressive symptoms.<sup>39</sup> Resnick believed that filicide associated with suicide focuses more on the mother than the child where the mother believes that the child will not be able to survive without her.<sup>40</sup> There often exist various stresses in the mother's life such as poverty, shame, frustration, or mental illness.<sup>41</sup> However, mothers often intend the murder to be an act of love.<sup>42</sup>

In some cases, the child's murder was caused by a mother's displaced aggression against a spouse or intimate partner.<sup>43</sup> These may be deliberate acts of anger against the partner but they are ultimately physical acts against the child.<sup>44</sup> The stimulus to kill is revenge and in order to injure the spouse or partner.<sup>45</sup>

The category of battering mothers was the most frequent triggering impulse in a study conducted in England of cases from 1970-1975.<sup>46</sup> P.T. d'Orbán found that these mothers killed in sudden, violent outbursts, usually as the result of overzealous discipline.<sup>47</sup> Resnick found that homicidal intent was lacking in such murders; they were usually committed accidentally and as the result of fatal battered child syndrome.<sup>48</sup> In his study, fathers were more likely to kill in violent outbursts than mothers, with men committing 10 of the 16 accidental filicides.<sup>49</sup>

The last category, neonaticide, includes women who kill their

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*Id.*

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*Id.*

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d'Orbán, *supra* note 23, at 568-69.

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Resnick, *supra* note 16, at 77.

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Resnick, *supra* note 16, at 77.

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*Id.*

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*Id.*

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d'Orbán, *supra* note 23, at 561.

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Resnick, *supra* note 16, at 78.

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d'Orbán, *supra* note 23, at 561.

46

*Id.* at 561.

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Resnick, *supra* note 16, at 77.

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*Id.* at 78.

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*Id.* at 77.

children within 24 hours of birth.<sup>50</sup> In the study conducted in England, of 89 sample cases of maternal filicide, all 11 cases of neonaticide involved single women.<sup>51</sup>

*No, I don't want to hold it. It looks so small, so delicate. What if I break it? I was able to just get by with my first baby but I think something will happen to this one. I don't want to hurt it, so you hold it. I may drop it or hold it too tightly, by accident. My hands are shaking, I better not hold it right now. Maybe later. But, is this even my baby? The other nurse gave it to me, but how can she be sure this is mine? All newborns look alike, maybe she gave me someone else's baby and my real child is somewhere else.<sup>52</sup> Oh no, what if I have the wrong one! I don't know what I'm doing here. Peter is upset there is one more child to pay for. I think this hospital smells like sick people. I want to leave! I just want to go home and forget the last nine months.*

#### THE LEGAL SYSTEM'S RESPONSE AND A HISTORICAL PERSPECTIVE

The historical response of the public and the legal system to mothers who are accused, tried, and convicted of murdering their children has been mixed. People must deal with conflicting emotions: are women who kill their children murdering freaks of nature who deserve to be locked away with the rest of society's unfavorables, or are they are victims themselves, in need of medical help and supervision? There is considerable difference between how society views a woman who kills her child and how society views a woman who kills a stranger. This is what Janice's lawyer explained to her and that is what she saw in the juror's faces.

While a random act of violence is itself a terrible thing, women who murder their children are often incorrectly deemed unusual and amoral criminals. Society might not want to accept maternal filicide as an occurrence that deserves attention, but history tells us that societies across the world and throughout time have had to deal with this problem. In the early stages of civilization, ritual sacrifice and the murder of children were

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<sup>50</sup> d'Orbán, *supra* note 23, at 561.

<sup>51</sup> *Id.* at 561.

<sup>52</sup> *Thoughts partly taken from a very good episode of The Dick Van Dyke Show.*

common practice and even allowed by law.<sup>53</sup> These practices continued through the early years of the millennium as the ritual exposure of newborns was prevalent among Christians and pagans alike.<sup>54</sup> During the Middle Ages families slept together in one bed which sometimes resulted in adults rolling onto and smothering infants.<sup>55</sup> This became common enough for the Church to set a standard penance of one year on bread and water followed by two years without wine or meat for causing such deaths.<sup>56</sup>

Opinions of women who killed their children changed after the Reformation and during the rise of Puritanism. Governments began to regulate sexual morality; women who bore illegitimate children received the “scarlet letter,” and it was presumed that the unexplained deaths of illegitimate children were the result of maternal filicide, which became punishable by hanging.<sup>57</sup> The Stuart Bastardy Act of 1623 was one of the first pieces of legislation that addressed the issue.<sup>58</sup> It was enacted in part as a response to unwed mothers who would kill their children shortly after birth in an attempt to hide the child and thus avoid social disgrace.<sup>59</sup> The Act called for a presumption that the cause of death of an illegitimate child was the mother.<sup>60</sup> Before the Act was repealed in the 1800’s, it was legal to execute mothers for their child’s death without any proof that the mother was the killer or that the child was actually murdered.<sup>61</sup>

The number of infanticides did not decrease as modern history progressed; one-third of all homicide cases in England and America during the colonial period were child homicides.<sup>62</sup> In fact, 1860 police reports from London indicated that hundreds of dead children were found in the Thames and in other canals around the city.<sup>63</sup> In England, attitudes toward mothers who killed their children swayed towards sympathy when

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<sup>53</sup> Daniel Maier-Katkin, *Beneath the Surface of Infanticide: The Murder of Young Children by Their Mothers is Among the Most Common Forms of Homicide*, CHARLOTTE OBSERVER, December 11, 1994, at 1D [hereinafter *Beneath the Surface*].

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Gary Slapper, *Mother and Madness: Law*, The Times of London, March 19, 1996, at Features [hereinafter *Mother and Madness*].

<sup>59</sup> Debora K. Dimino, *Postpartum Depression: A Defense for Mothers Who Kill Their Infants*, 30 SANTA CLARA L. REV. 231, 234 (1990).

<sup>60</sup> Slapper, *supra* note 58.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Maier-Katkin, *supra* note 53.

the Infanticide Act of 1922 and its 1938 amendment were enacted. The Act provides that when a mother kills her child of age one year old or less, the murder charge is reduced to manslaughter if, at the time of the killing, "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."<sup>64</sup> Further, the prosecution is not allowed to offer evidence in refutation and the judge is allowed discretion in sentencing.<sup>65</sup> This has usually resulted in probation or hospitalization for the mother.<sup>66</sup> The Act's automatic reduction was a legislative response to the recognition of the existence of postpartum depression.<sup>67</sup> Postpartum depression has been defined as an illness that causes a deranged mental state in a mother after childbirth.

Mothers continue to murder their children today. While the homicide rate for the general public in Great Britain today is 10 deaths per million, the rate among British children under the age of one is 40 deaths per million.<sup>68</sup> Although such statistics are not grossly inflated in the United States, Great Britain's former colonies have had a more retributive attitude toward women and have been more inclined to incarcerate them.<sup>69</sup> In addition, United States still has no analogous law to England's Infanticide Act; in fact, there is no legislation in the United States dealing with mothers who kill their children. Such crimes are treated like any other homicide.<sup>70</sup>

Thus, the difficult questions concerning maternal filicide and the American criminal justice system lie at the ground levels. In each instance of a mother killing her child, the justice system can take one of three approaches: the district attorney can choose not to prosecute at all because of a lack of evidence or the inability to prove the mother's sanity at the time of the crime, the court can refuse to accept a mental illness, such as postpartum depression, defense as valid and can therefore convict the woman of a degree of murder, or the court can accept a mental illness defense as valid and sentence the mother to a combination of probation and psychiatric help.<sup>71</sup>

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<sup>64</sup> Slapper, *supra* note 58.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* and Dimino, *supra* note 59, at 236.

<sup>67</sup> Dimino, *supra* note 59, at 235.

<sup>68</sup> Maier-Katkin, *supra* note 53.

<sup>69</sup> *Id.*

<sup>70</sup> Dimino, *supra* note 59, at 236.

<sup>71</sup> *Id.* at 238.

*One was crying. The other was dipping his mashed food onto the floor. The phone was ringing and ringing. The rent check was late, the power bill check bounced, Mrs. Titleman wanted her casserole dish back. A casserole dish! She called to nag about that! With all that I have to worry about ... and then Peter called from work about something I can't remember. I had to get out of the house. I had to leave. I grabbed the kids and tossed them in the car. I felt frustration and rage. Against Peter, the telephone operator, the kids, anybody, and everybody. I didn't ask for this life, I didn't accept the responsibility of all that my life requires. I drove around but had nowhere to go so I sped home. In the house, running inside. Probably had one kid under one arm and the other dangling from my mouth. The phone rang again and again. Then the boy was waving this wooden spoon he got from the kitchen. Around and around. Spinning and waving. I couldn't take it - the noise, the sight, him. Peter, his parents, the bills. I had to do something, I had to make it stop!*

#### **POSSIBLE DEFENSES FOR MOTHERS WHO KILL**

A number of advocates have attempted to use postpartum depression defense in these cases. Postpartum depression is a mental illness that a mother may experience after the childbirth.<sup>72</sup> There is debate about degrees of the illness. There is also debate about its actual existence. As a result of this debate, the legal and medical communities have not officially recognized postpartum depression. The American Psychiatric Association's manual of mental disorders does not distinguish stress in a woman in the postpartum period from the stress of another woman of the same age.<sup>73</sup> However, some doctors diagnose postpartum depression and report possible causes as including physical, psychological, and environmental factors. One significant physical change in a woman following childbirth is the reduction of estrogen and progesterone in the body when the placenta is delivered. However, physical changes from childbirth alone cannot explain why a mother kills her child. If they did, then all, or significantly more, mothers would be killers.<sup>74</sup> Considering that hormonal changes exist in the majority of women although only some

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<sup>72</sup> Christine Anne Gardner, *Postpartum Depression Defense: Are Mothers Getting Away With Murder?*, 24 NEW ENG. L. REV. 953 (1990).

<sup>73</sup> *Id.* at 960.

<sup>74</sup> *Id.* at 988.

of them claim to suffer from postpartum depression and that some women's hormonal levels drop within the first 24 hours after childbirth but the depression does not appear until up to one week later, it is likely that psychological and environmental causes also play a role in manifesting postpartum depression.<sup>75</sup> The stress of pregnancy alone may contribute to psychological problems. This is especially true if there is a pre-existing vulnerability. Again, the medical field is divided on the issue. Some physicians believe that mentally stable and healthy women rarely suffer from postpartum depression while other physicians believe that women who have never suffered from mental illness can be vulnerable to the psychotic depression.<sup>76</sup>

Environmental factors that may explain why some women are more likely to experience postpartum depression include the existence of personal problems dealing with loss and separation, a history of problematic relationships with their mothers, the stress of caring for a new-born, the assumption of adopting to the maternal role, and the possible presence of "overloading factors." Overloading factors are factors such as a handicapped child or financial problems.<sup>77</sup>

For various reasons such as ignorance of the diagnosis and absence of acceptance in the medical community, the majority of courts in the United States do not recognize postpartum depression as a mental impairment sufficient to establish an insanity defense.<sup>78</sup> Since postpartum depression has no concrete legal status, defendant mothers who claim to have suffered from it find themselves trying to qualify under the insanity defenses that are recognized by law. The M'Naughten test, termed the "right-wrong" test, is the test recognized in the majority of American jurisdictions to determine one's sanity at the time of a crime. It states that for a defendant to use the insanity defense it must be clearly established that at the time of committing the act the defendant suffered from a defect of reason or from a disease of the mind rendering him or her unable to know the nature and quality of the act; or, if the defendant did know what she was doing, that she did not know that what she was doing was wrong. Therefore, a defendant cannot be found guilty if she is found to either not have known what she did or not have known that what she did was wrong.<sup>79</sup> The American Law Institute (ALI) test is the insanity test found

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<sup>75</sup> *Id.* at 960.

<sup>76</sup> *Id.* at 960.

<sup>77</sup> *Id.* at 960.

<sup>78</sup> Dimino, *supra* note 59, at 236.

<sup>79</sup> Gardner, *supra* note 72, at 967.

in a minority of jurisdictions in the United States.<sup>80</sup> A little broader than the M'Naughten test, the ALI test 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 or she lacks substantial capacity either to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirements of law."<sup>81</sup>

Critics of the M'Naughten test point to its narrow scope while critics of the ALI test point to its broad scope. The trend in the United States is toward the M'Naughten test. Society seems to want more people held accountable for their actions even when there may be a mental defect.<sup>82</sup>

*I had to take that damn wooden spoon away from him again. I can't be mixing spaghetti sauce with a spoon that he's been throwing around this dirty house. I mean, what would Peter say if he found dirt in the bowl, that little ... How many times do I have to tell you to leave my things in the kitchen alone! I just took that away from you, put it back! What do I have to do to teach you a lesson! You don't ever listen to anything I say! What if I hit you with this spoon a few times, huh! Maybe then ... you'd listen, uh, you, uh, little ... How's that, huh! The spoon doesn't seem so nice to play with anymore, does it! Is that what I'll need to do from now on? Hit you in the head with anything I don't want you to touch? Get upstairs! Go! Move it, I don't want to see you! Why are you still not listening me! I'm talking to you! Move it - upstairs ... why are you bleeding ... what have you done. Get up! Move, say something ... please, what happened to you?*

Janice's physical upheaval combined with her and Peter's financial depression made the nine months that she was pregnant almost unbearable. An expert on postpartum depression might consider Janice's encounters with her step-father during her adolescence significant. This relationship in addition to her experiences and feelings when her first child was not allowed to return home from the hospital immediately, makes Janice susceptible to postpartum depression. Janice has felt a loss of control of her thoughts or functions which also contributes to her susceptibility. If the jurisdiction recognizes postpartum defense, Janice's

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<sup>80</sup> *Id.* at 968.

<sup>81</sup> MODEL PENAL CODE & COMMENTARIES § 4.01 (Official Draft and Revised Comments 1985).

<sup>82</sup> Gardner, *supra* note 72, at 968.



attorney would certainly consider raising it.

*My little princess, mommy's done something terrible. I know you don't understand what I'm saying, but that's because you are too young. Babies can't understand, so that's why I'll do the thinking for us. Something terrible happened to your brother. We can't stay here. I have to go, I know, and there will be no one around for you. That's why this is best for you too. This is best for all of us. See, this is just water, honey. I'm just going to put you down here, no stop squirming around, its is the way it has to be. Shhh, stop making noise, shhh, just a little bit longer, and then mommy will soon be with you and your brother.*

If Janice presented an insanity defense to the court, she may not be successful. The M'Naughten test focuses on whether, at the time of the act, the defendant knew what she did or whether the defendant knew that what she did was wrong. No one clearly knows what Janice was thinking; even she has not been able to completely process her thoughts. However, it is arguable that Janice was not aware of her actions when she was battering her older child with the wooden spoon. Ultimately, that determination is left to a trier of fact. While a trier of fact will also consider the death of the younger baby, it is more certain that Janice was aware of her actions relative to that death. From her thoughts, it is clear that she recognizes that she has done something terrible, that she wanted to remedy her situation herself, and that she wanted to take the baby with her when she left. This death will be harder to defend with an insanity plea.

## CONCLUSION

Janice did not find any aspect of the process that was to determine her future intriguing or interesting. She thought about her friends for the first time. Actually, Janice took the liberty of mentally referring to them as her former friends. None of them had stopped by to talk with her, to voice support or even to express horror. They did not understand what Janice did and they did not want to understand it.

If the community shuns a woman suspected or convicted of murdering her children, then how is the criminal system, a system representative of the community, supposed to act? How does it act? In a survey from England that tracked maternal filicides for a six-year period,

36 percent of the defendants were released on bail prior to trial.<sup>83</sup> That means just over one-third of the women arrested for committing arguably one of society's worst crimes were set free prior to trial.

England's Infanticide Act inherently mitigates the punishment for killing newborns. Of the eighty-nine women from the survey, sixty of them were charged with murder.<sup>84</sup> Of those sixty cases, only two women were actually convicted of murder.<sup>85</sup> Nine other women were sentenced to a period of incarceration; twelve percent of the eighty-nine women who had killed their children were incarcerated.<sup>86</sup> Did the public identify or sympathize with these women? They seemed to accept the mental illness defense; over one half of the cases resulted in medical dispositions.<sup>87</sup> Importantly, these statistics are from an English study. American statistics would represent more retributive opinions.<sup>88</sup>

A mother on trial for murdering her child appears to be subject to a higher profile case when compared to a father on trial for murdering his child. While cases of fathers accused of murdering their children may not grab attention on the front pages of newspapers, it is relevant to compare their case dispositions to those of mothers. Fathers receive much harsher penalties. Of the women from the English study, 56% received a medical disposition and 80% of those convicted of beating their children to death received no incarceration at all.<sup>89</sup> In contrast, P.D. Scott's study found that no father convicted of murdering his own child received a mental disposition but that 86% did receive a prison sentence.<sup>90</sup> Furthermore, Dr. Resnick's study of American cases found that 72% of convicted fathers were sentenced to execution or imprisonment, while only 14% of fathers were hospitalized. Most of the mothers convicted of murdering their children, on the other hand, were hospitalized (68%), while 27% of convicted mothers were imprisoned.<sup>91</sup> No convicted mother was executed.<sup>92</sup>

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<sup>83</sup> d'Orbán, *supra* note 23, at 566.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 567.

<sup>87</sup> *Id.* at 566.

<sup>88</sup> Maier-Katkin, *supra* note 53.

<sup>89</sup> d'Orbán, *supra* note 23, at 569.

<sup>90</sup> *Id.*

<sup>91</sup> Resnick, *supra* note 16, at 80.

<sup>92</sup> *Id.*

*When I left my home ... I was very emotionally distraught. I didn't want to live anymore. I felt like things could never get any worse ... I felt even more anxiety coming upon me about not wanting to live. I felt I couldn't be a good mom anymore ... I felt I had to end our lives to protect us from any grief or harm ... I had never felt so lonely and sad in my entire life ... Why was I feeling this way? Why was everything so bad in my life? I had no answers to these questions ... I couldn't believe what I had done. I love my children with all my heart. That will never change. I have prayed to them for forgiveness and hope that they will find it in their heart to forgive me.<sup>93</sup>*

In all likelihood, Janice will be convicted for murdering her two children. At best, she can present either a postpartum depression or insanity defense for the death of her older child. Even though the surveys from England show that women are more likely to receive medical treatment, there is no corresponding Infanticide Act in the United States to mitigate the charges. Should there be such a law in the United States? If, for instance, the medical community resolves the debate concerning the validity of postpartum depression, would an American Infanticide Act work? That question is hard to answer because “work” can have different definitions: putting more convicted mothers in hospitals or preventing maternal filicides in the first place. But, since the medical community is far from reaching a consensus and the American public is more retributive than rehabilitative, there does not seem to be an American Infanticide Act on the horizon.

If she is not sentenced to death, Janice will likely spend the next 20 to 30 years in prison before her first parole date. She will probably spend a large portion of her time thinking about her children, about how she misses them, and about how she let them down. She will wonder about the lives they would have experienced had she not killed them. She will suffer tremendously. Maybe not as much as her children suffered. Maybe as much.

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<sup>93</sup> Included are parts of Susan Smith's confession to murdering her two sons. Lolo Pendergrast, *At Boat Ramp: Despair, Confusion Smith Says in Confession She Wanted Her Sons to Die With Her*, CHARLOTTE OBSERVER, November 23, 1994, at 1A.