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THE CONVICTION OF ANDREA YATES: A NARRATIVE OF DENIAL

SHERRY F. COLB*

INTRODUCTION

Previously an anonymous married mother of five, Andrea Yates drowned her children to death in June of 2001 and instantly became a household name. The public desperately sought an explanation. Everyone hoped for a reassuring narrative about Andrea's actions that would make sense out of the senseless and thereby restore our faith that mothers do not kill their children, even in the face of the reality that they do, and that Andrea had.

Two alternative accounts of the Yates tragedy immediately presented themselves. One was that Andrea[1] was insane; the other, that she was evil. If Andrea was completely crazy, then the public could embrace the notion that because the mother in this case was out of her mind, it followed that, in some sense, Andrea's authentic self did not truly kill her own children. Barring that explanation, Andrea had to have been a monster of mythical proportions who accordingly deserved harsh punishment. Either way, the public could hold onto its belief that a shockingly deviant force was at work, and people accordingly would not have to alter any of their deeply held assumptions about motherhood in response. In the social realm, extreme deviance, by its very nature, affirms rather than threatens the boundaries of the norm.

In "Who Is Andrea Yates? A Short Story About Insanity," Professor Deborah W. Denno opens a startling and compelling window on the Yates prosecutor's distortion and manipulation of facts through its star expert witness, Park Dietz.[2] Though surprisingly unfamiliar with the nature of the mental illness from which Andrea was apparently suffering (postpartum depression and psychosis), as Denno relates, Dietz opined with confidence that Andrea was sane and in control when she killed her offspring. At least in part because of Dietz's testimony, a jury convicted Andrea of capital murder.[3]

As Professor Denno describes with clarity and precision, the Texas law of insanity is quite narrow and unforgiving.[4] To prevail, a person would have to prove that a serious mental illness had so afflicted her that she was unable to know that her act was "wrong," an adjective that itself admits of no straightfor-

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1. I will refer to Andrea Yates primarily as "Andrea" as Deborah Denno does in her article, *Who Is Andrea Yates? A Short Story About Insanity*, 10 DUKE J. GENDER L. & POL'Y 1 (2003).

2. Denno, *supra* note 1, at 17.

3. *See id.*

4. *See id.* at 16-7.

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ward definition in Texas.[5] Such a standard, as I too have argued,[6] left little space for an acquittal. Add to that the charismatic, if ill-informed, testimony of Park Dietz, and Andrea may never have had a chance.

I found Denno's presentation both insightful and persuasive. Andrea's conviction may have been an over-determined phenomenon, an event, in other words, for which it is difficult to identify one "but for" cause, without which the jury might have returned a verdict of not guilty. In this commentary, my objective is therefore modest. I wish not to detract in any way from Professor Denno's outstanding article but merely to add one more to the list of arguably sufficient causes for Andrea's conviction. My addition is the jury's need for a satisfying narrative.

AUDIENCE CHOICE OF NARRATIVE

To understand how an audience might select a narrative from a series of possibilities, consider the ancient tale of the Wisdom of Solomon.[7] In this story, two "harlots" each give birth to a baby.[8] One of the babies dies in the night, and when morning comes, each of the women claims to be the mother of the living infant.[9] The mothers bring their case before the wise King Solomon of Israel.[10] The King thus becomes the chosen finder of fact, the monarchical equivalent of today's jury. Solomon has a solution to the women's dilemma. He asks for a sword and says, "Divide the living child in two, and give half to the one, and half to the other."[11] In response to this grotesque decree by the King, one of the women (whom the text describes as "the woman whose the living child was") begs Solomon to spare the child, even if it will mean losing the infant to her rival.[12] The other woman says that she can live with the division of the child.[13]

Upon hearing each mother's response, Solomon determines that the first woman is the "real" mother and places the (whole, unharmed) baby in her custody.[14]

Audiences have long enjoyed this story, because it seems to confirm what we already believed—that a true mother is willing to sacrifice her own happiness for the survival of her child, and that she would never deliberately put her baby in harm's way. A selfless love, in other words, is the failsafe litmus test of motherhood.

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5. *Id.* (discussing the ambiguity of the Texas insanity standard vis-à-vis the meaning of "wrong" (illegal versus immoral by a community standard versus subjectively viewed as immoral)).

6. *See, e.g.*, Sherry F. Colb, *Insane Fear: The Discriminatory Category of "Mentally Ill and Dangerous,"* 25 NEW ENG. J. ON CRIM. AND CIV. CONFINEMENT 341 (1999).

7. 1 *Kings* 3:16-28.

8. *Id.* at 3:16-18.

9. *Id.* at 3:19-22.

10. *Id.* at 3:22.

11. *Id.* at 3:25.

12. *Id.* at 3:26.

13. *Id.*

14. *Id.* at 3:27.

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THE ALTERNATIVE STORY

Consider now an alternative reading of the Solomon story.[15] Assume that it was the biological mother of the baby who agreed to have her child split in two. In an unexpected twist on the story of a jealous lover, this mother would sooner see her baby dead than in the arms of another woman, saying, "Let it be neither mine nor thine, but divide it."[16]

On this reading, the woman who said, "O my lord, give her the living child, and in no wise slay it,"[17] may have understood that her bluff was called. In grief for her own dead child, she had attempted to lay claim to another woman's baby. Having no desire, however, to see a second infant die, the kidnapper gave up her demand in exchange for the child's life.

Between the two accounts of the Wisdom of Solomon, the strict textual story is the more palatable. One of the women is truly evil. She first seeks to kidnap another woman's child and then agrees to have the King slaughter the innocent baby, rather than see the real mother reclaim her offspring. The other woman, by contrast, is a good mother who does nothing wrong. She pleads for her baby but will give up the infant rather than subject her child to death.

The second story, by contrast, is alien and genuinely disturbing. It is about jealousy and pathology among mothers. In this story, one woman attempts to replace her dead child with another, and a second woman is ready to agree to the death of her own offspring. One cannot help but find the outcome—custody to the kidnapper rather than the homicidally jealous biological mother—prudent but nonetheless disconcerting.

FINDING A HAPPY ENDING IN THE YATES STORY

No matter how it is interpreted, the story of Andrea Yates is depressing and tragic. Unlike Solomon, we cannot escape the reality that Andrea was actually the mother of the five children she killed. Indeed, it seemed to have been precisely her experience of bearing these children that led inexorably to her mental and emotional unraveling. In other words, her status as their mother may well have triggered her breakdown.

In the absence of a Hollywood-ready story, in which the true culprit is an outsider onto which one can comfortably heap all condemnation, an audience—the jury, in particular—had two imperfect narrative options from which to choose in Andrea's case. Andrea was either "mad" or "bad." To classify her as "mad," moreover, could not simply mean that Andrea suffered from a mental disorder, a fact that even Park Dietz did not dispute.[18] It had to be more than that.

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15. I have, in different venues, proposed alternately that the Wisdom of Solomon might be a story of denial, *see* Sherry F. Colb, *Words that Deny, Devalue, and Punish: Judicial Responses to Fetus-Envy?*, 72 B.U. L. REV. 101, 112 (1992), or a story of awarding custody, *see* Sherry F. Colb, *King Solomon in the 21st Century*, FindLaw (June 28, 2000) *at* http://writ.news.findlaw.com/colb/20000628.html. The story I present in this piece is more in keeping with the first of these two alternative readings, although I expand upon its implications here more than I have in the past.

16. 1 *Kings* 3:16-28.

17. *Id.* at 3:26.

18. Denno, *supra* note 1, at 22.

In our national mythology,[19] a mother—as in the Solomon story—does not *do* such things. To violate that principle, a woman would have to be stark, raving mad and thus unrecognizable as a "mom." Because during her confession Andrea sounded calm,[20] because she was intelligent and spoke coherently, and because she acted methodically rather than frenetically or hysterically, she could not possibly have been "mad" in the sense that her audience needed her to have been. The prospect of a mother so apparently in control, yet incapable of refraining from such an atrocity, would be too frightening to contemplate.

The alternative was that Andrea was "bad." This narrative, too, should have been a stretch for the jury. In the years before she killed her children, Andrea was said to have been nurturing and giving, the sort of person who thought of herself last and others first.[21] She appeared to have truly loved her family and to have comported with and aspired to conventional American ideals of motherhood.[22]

Nonetheless, Park Dietz, expert for the prosecution, was part of a team that persuaded the jurors to find Andrea responsible for her actions. As Denno shows, that was doubtless in part because Dietz was ready to speculate wildly and attribute rationality to the actions of a woman who believed that Satan was threatening her children's eternal souls with damnation.[23] Though Dietz claimed to be on the side of justice and truth, Denno demonstrates just how irrelevant these ideals were to a man for whom the phrase "hired gun" could not have been better suited.

ANOTHER SUFFICIENT CONDITION

Still, I want to suggest that there may have been one more card in the deck stacked against Andrea: the jury's need to believe that mothers who kill their children are either obviously deranged or profoundly evil. Because Andrea did not fit the common stereotype of the screaming, hysterical, out-of-control lunatic, the alternatives were that Andrea was sick and yet, in many ways, very much like other people; or that Andrea was evil. The second alternative may have seemed far less threatening a prospect than the first.

If Andrea was insane, as Denno suggests so effectively by mobilizing the actual evidence, then what follows? One conclusion that would be hard to escape is that serious mental illness can be difficult to detect, particularly if the sick person is in denial about her illness (as Andrea was).[24] People like to believe that they can "tell" who the mentally ill are. If an insane woman can calmly execute a plan to drown her five children, however, and then immediately call the

19. Other countries have recognized the linked phenomena of postpartum mental illness and infanticide and have accordingly provided categorically more lenient alternatives to incarceration for the mothers in such cases. *See, e.g.*, Aliza Israel, *Infanticide Risk Greatest in First Week*, 128 THE REVIEW (University of Delaware, March 15, 2002) (citing a Columbia Clinical Psychology Professor for the proposition that "America is one of the only countries that put women guilty of infanticide in jail").

20. Denno, *supra* note 1, at 36 .

21. *See, e.g.*, Megan K. Stack, *Killings Put Dark Side of Mom's Life in Light*, L.A. TIMES, July 8, 2001, at A20.

22. Denno *supra* note 1, at 8.

23. *Id.* at 20.

24. *Id.* at 54.

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police, then there may be many very sick people who walk among us without our even knowing it. Who can guess what some of them might be capable of doing?

Much more reassuring is the notion that a small number of people are evil and do terrible things for which they must suffer condemnation and punishment. The result, that Andrea is one of these people—a deviant who can be eliminated from society—is comparatively comforting. Paradoxically, the notion that a mother would not kill her own children—embraced by the traditional Wisdom of Solomon story as well—is affirmed by the Yates jury if Andrea is found to be evil rather than suffering from an illness that in milder forms afflicts many mothers. The latter calls the potential behavior of every mom into question and would push us toward the more strange and disturbing version of the Solomon tale.

NOT SO DIFFERENT

Shortly after Andrea's arrest, I joined a group of panelists on a local cable television show to examine the implications of Andrea's actions.[25] In one segment of the program, a woman called and said that she had never told anyone her story before but that *she* had almost killed her own child many years ago.[26] The host of the show, Lynn Doyle, tried to comfort the caller, telling her that "almost" killing and actually killing are two very different things and that the caller should feel proud of having sought help and having refrained from violence.[27]

The caller was grateful for the host's comforting words but insisted that the main difference between her and Andrea was luck. This woman, who knew the agony of severe postpartum depression, felt nothing but compassion and pity for Andrea.[28] The sense that something outside of herself and not all that rare was operating on her and on Andrea was palpable and quite frightening. If Andrea was a victim instead of a perpetrator, then it might follow that for many frightened and horrified families out there, it could have been them.

"WHODUNIT" AND "WHAT WAS DONE"

In an article published a couple of years ago,[29] I analyzed the distinction between two different types of criminal cases. In one type, the "whodunit," the prosecution and defense agree that a crime was committed but disagree on whether the defendant was correctly identified as having been involved in that crime. In the other, "what was done," the prosecution and defense agree about who the involved parties were but disagree on whether the defendant's role was culpable.

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25. *It's Your Call With Lynn Doyle* (Comcast News television broadcast, June 28, 2001).

26. *Id.*

27. *Id.*

28. *Id.*

29. *See* Sherry F. Colb, *"Whodunit" Versus "What Was Done": When to Admit Character Evidence in Criminal Cases*, 79 N.C. L. REV. 939 (2001) [hereinafter Colb, *Whodunit*].

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An example of the "whodunit" scenario is a typical bank robbery prosecution. No one denies that there was a crime. The issue is only whether the defendant was the one who committed it. An example of the contrasting "what was done" scenario is a rape prosecution in which the defendant claims that sex was consensual. No one disputes the fact of intercourse between the defendant and the victim or the identity of the parties involved. The question is whether the defendant was acting without consent.

Research shows that juries tend to be more willing to convict in the "whodunit" than in the "what was done" scenario.[30] Most of my article addresses the evidentiary rules that should apply in each of the two types of cases, rules that will remain outside the scope of the discussion here. Relevant to this commentary, however, is my hypothesis at the end of the article about why it tends to be easier to obtain a conviction in a "whodunit" trial.[31]

The provisional explanation that I offer for this phenomenon is the jury's wish to have the happiest possible ending for a trial narrative. If the prosecution and the defense agree that a crime was committed, then the more satisfying outcome is to find that the culprit has been caught and brought to justice rather than that the defendant is innocent and the perpetrator still at large. To the extent that the jury feels empowered to "make up the ending," it might therefore be inclined to find the available defendant guilty.

In the "what was done" case, however, there is a dispute about whether any crime was committed at all. Though a conviction is satisfying when a crime has undoubtedly taken place, an even happier story is one in which no crime has occurred at all and no one needs to be punished. In such cases, I suggest, a jury might therefore feel inclined toward acquittal.[32]

ANDREA'S CASE

How does my "whodunit"/"what was done" dichotomy help explain the Andrea Yates verdict? It would seem at first glance that because the prosecution and the defense disagreed on the question of whether a crime had been committed at all, the case presents a "what was done" scenario, and the jury should have been inclined to acquit. Yet here I suggest just the opposite.

The reason that this and other insanity cases merit a distinct analysis, however, is that they do not feel the same to jurors as a typical "what was done" scenario. If a jury finds that an alleged victim consented to sex with a defendant, for example, then it finds that there was no victimization of the complaining witness and that the defendant was accordingly truly innocent of any wrongdoing or harm.

Here, by contrast, Andrea killed her five children, and thus no one could claim that there was no killing or victimization. Her four sons and one daughter were necessarily victims. In an insanity case, even though the disagreement between prosecution and defense concerns the defendant's culpability rather

30. *See* David P. Bryden & Sonja Lengnick, *Rape in the Criminal Justice System*, 87 J. CRIM. L. & CRIMINOLOGY 1194, 1324 (1996-1997).

31. *See* Colb, *Whodunit*, *supra* note 29, at 989-992.

32. *Id.* at 990.

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than her identity, the structure of a verdict nonetheless resembles that in a "whodunit" case: there are unavoidably victims and just as surely harms that will go unpunished if the defendant is judged insane.

In keeping with this hypothesis, the informal conversations I had with people who sympathized with Andrea and would probably have brought back an acquittal, revealed a possible alternative culprit: Andrea's husband, Rusty. Several people asked me, for example, whether Rusty might be prosecuted for homicide, either for impregnating a woman who doctors had warned should never become pregnant again, or for failing to do more to prevent the tragedy that occurred. Thus, even those who were unable to fit Andrea into the role of culprit still needed a guilty party to satisfy the narrative and focused the search for a culprit on Rusty.

The lesson here is that when five children wind up dead, people want to blame someone if a narrative of blame is remotely plausible. They accordingly attempt to transform a "what was done" narrative about one criminal defendant into a "whodunit" scenario about assessing blame between a husband and a wife—a transformation that is unavailable to jurors when only one person is on trial.

As a defendant using the insanity defense, even absent the Dietz testimony, Andrea may therefore have triggered the jurors' inclination to convict. Andrea's story, moreover, presented an additional reason for people to seek a narrative of blame. Beyond the desire to hold someone—rather than no one—accountable, there was the apparent resemblance that Andrea bore to so many other moms. That is, prior to killing her children, Andrea was not the obviously deranged, homicidal maniac that one could easily pick out of a crowd. If Andrea could be brought to commit such a heinous deed by something other than an evil character, then so could other mothers, particularly those who are burdened with caring for children at home with little besides their children's needs to engage their minds.

Rather than accept such a possibility and thus shatter a benevolent view of motherhood in general and stay-at-home motherhood in particular, one could instead deem Andrea "responsible." This would declare her a deviant soul whose behavior had no larger implications, apart from the need to punish her and thus deter other similarly evil people.

It may well have been this need on the part of the jury—to deny the reality of postpartum depression and psychosis in a person who appeared sufficiently similar to others to cause alarm—that Park Dietz satisfied through his expert testimony. Rather than being one of six victims on the day she drowned her children, Andrea was labeled a perpetrator.

Dietz's explanation made it easier to believe that an evil monster could seem just like everyone else than that a sickness could look so much like normalcy. Bad people, moreover, make choices and, with the right set of incentives, can be motivated to make the right ones in the future. Mad ones might make wrong choices regardless of incentives. Order is restored, if we accept Dietz's version; order, in a sense, is impossible if we do not.

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