

# THE 2006 FRIEDMAN & GILBERT CRIMINAL JUSTICE FORUM

## THE ANDREA YATES CASE: INSANITY ON TRIAL

PHILLIP J. RESNICK\*

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On June 20, 2001, Andrea Yates drowned each of her five children in her bathtub. The nation struggled to understand how a loving mother could systematically kill her children in apparent cold blood. No crime evokes more intense feelings than a mother killing her own children.<sup>1</sup> There was extraordinary media coverage of her trial in Houston, Texas in 2002. Her defense attorneys, George Parnham and Wendell Odom entered a defense of not guilty by reason of insanity (NGRI) to multiple counts of first degree murder with death penalty specifications. The 2002 trial jury verdict of guilty was overturned on appeal. Her second trial in 2006 ended with an insanity verdict. This Article will relate the facts that led up to Andrea Yates’s homicides, summarize the testimony of prosecution and defense psychiatrists, contrast Mrs. Yates’s first and second trials, and comment on public perceptions of the insanity defense.

Andrea Yates’s early life provides no clues that she would later commit an infamous crime. She graduated valedictorian of her high school class of 608 students. She was captain of her high school swim team and president of the National Honor Society. Upon completion of her B.A. in nursing, she became a highly regarded nurse at MD Anderson Hospital in Houston. She resigned after eight years upon the birth of her first child.

She married Russell (Rusty) Yates, a NASA engineer, at age 29. Although Andrea Yates was never personally critical of her husband, her best friend, Debbie Holmes, described Rusty Yates as “controlling, critical, and demanding.” Mrs. Yates let her husband make the decisions for the family. Andrea’s mother and Debbie Holmes said that Andrea lost her own identity after her marriage. Mrs. Yates agreed to Rusty’s plan to have a large family and was determined to be a “supermom.”

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\*M.D., Case Western Reserve University; Professor of Psychiatry, Director, Division of Forensic Psychiatry, Case Western Reserve University School of Medicine.

<sup>1</sup>See generally Phillip J. Resnick, *Child Murder By Parents: A Psychiatric Review of Filicide*, 126 AM. J. PSYCHIATRY 326 (1969).

Every witness in her trial agreed that Andrea Yates was a wonderful mother. She home schooled her children because her husband was concerned that the children might “pick up bad habits” if they went to public school. For each holiday, Mrs. Yates hand made crafts and costumes for her children in order to recreate the original holiday for them.

#### I. HIGHLIGHTS OF MRS. YATES’S PSYCHIATRIC HISTORY

Mrs. Yates reported that of her four siblings, two were diagnosed with depression, and a third with bipolar disorder. After her fourth son, Luke, was born on February 25, 1999, Mrs. Yates felt overwhelmed and depressed. She knew through a “feeling” that Satan wanted her to kill her children. On June 18, 1999, Mrs. Yates took an overdose of medication to take her own life rather than risk harming her children. Her suicide attempt led to her first psychiatric hospitalization (June 18 to 24, 1999). Her second psychiatric hospitalization (July 26 to August 10, 1999), occurred five weeks later after she attempted to cut her throat. Her discharge diagnosis was Major Depressive Episode, severe, recurrent, with psychotic features. After a couple months of subsequent psychiatric outpatient appointments, Mrs. Yates dropped out of treatment because she was “feeling better.”

In spite of contrary advice from her treating psychiatrist about the high rate of recurrence of postpartum depression, Mrs. Yates and her husband decided to have another baby. Mrs. Yates had two additional psychiatric hospitalizations (March 31, 2001 to April 12, 2001, and May 4 to 14, 2001) after the birth of her fifth child, Mary, on November 3, 2000. Her fourth hospitalization was precipitated by Mrs. Yates filling her bathtub at 4:00 p.m. She could not offer any explanation for doing this other than “I might need it.” She spoke little, did not eat or drink, and was “almost catatonic.” During her hospitalization she acknowledged having suicidal thoughts and was focused on not being a good mother. She was treated with antipsychotic and antidepressant medications.

Rusty Yates’s mother, Dora Yates, came to visit Rusty and Andrea Yates and her five grandchildren in April 2001. When she saw how poorly Mrs. Yates was functioning due to her depression, she decided to remain to help care for the children.

In the five weeks between Mrs. Yates’s hospital discharge on May 14, 2001 and the drowning of her five children on June 20, 2001, Mrs. Yates had a number of psychotic symptoms. She thought that television commercials for candy were referring directly to her. She believed that one commercial was saying that she was a “fat pig” and that she gave her children too much candy. She had a delusional belief since 1999 that television cameras were placed throughout her home to monitor the quality of her mothering. She thought that her mother-in-law was part of the monitoring and that there was a camera in her mother-in-law’s glasses. Mrs. Yates also had paranoid ideas that her house was “bugged” because she saw a van near her home. Finally, she had the belief that the one and only Satan was literally within her.

Mrs. Yates told none of her psychotic ideas to her family because she believed that Satan would use this information against her and force her to kill her children. She did not reveal her psychotic thinking to her psychiatrist when she kept outpatient appointments on June 4, 2001, and June 18, 2001. Her psychiatrist discontinued her antipsychotic medication on June 4, 2001, because of side effects, but continued Mrs. Yates on an antidepressant.

## II. MRS. YATES'S THOUGHTS PRECEDING THE HOMICIDES

Mrs. Yates came to believe that her children were not developing right “intellectually” and were not “righteous.” Her children’s manners were bad. She believed that her children would “never be right” because she had “ruined them” due to her defective mothering. She thought that her son Luke would become a “mute homosexual prostitute” and her son John would become a “serial murderer.” She foresaw that her son Noah would die a tragic death and that her son Paul would be hit by a truck. She was convinced that all of her children would be punished and “burn in hell.”

Mrs. Yates was focused on the biblical verse from *Luke 17:2*, “It would be better for him if a millstone were hung around his neck and he were thrown in the sea than that he should cause one of the little ones to stumble.” She related this verse to her failure to make her own children “respectful and righteous.” She struggled back and forth in her mind for one to two months about whether to take the lives of her children.

## III. MRS. YATES'S ACCOUNT OF THE HOMICIDES

On June 20, 2001, the Yates children ranged in age from 6 months to 7 years. Noah was 7, John 5, Paul 4, Luke 2, and Mary was 6 months old. Rusty left for work at about 9:00 a.m. and Mrs. Yates didn't expect her mother-in-law to come to assist her until 10:00 a.m. She reported that she drowned her five children in no particular order between 9 and 10:00 a.m. After drowning each child, she placed the dead child on the double bed in the master bedroom. She placed her infant Mary in the crook of John's arm so he could protect her in the after life because John had been a particularly good big brother. Noah, age 7, was most difficult to drown because he was the strongest. Noah managed to get his head above water and say, “I'm sorry Mommy.” He was left in the bathtub.

After drowning her children Mrs. Yates called 911 and requested that a police officer be sent to her home. She then called her husband, Rusty, and said, “It's time,” referring to the biblical prophecy in Revelations about Armageddon. When the police arrived, Mrs. Yates told them, “I killed my kids,” and led them to the room with her four dead children.

Mrs. Yates believed that Satan was within her and tormented her and the children. She thought that after she drowned her children, she would be arrested and executed. She indicated that Satan would be executed along with her. She believed it was right to drown her children because she wanted to save their souls and didn't want them to be “in Satan's hands.”

## IV. TEXAS STANDARD FOR INSANITY

“It is an affirmative defense to prosecution that, at the time of the conduct charged, the actor, as a result of severe mental disease or defect, did not know that his conduct was wrong.”<sup>2</sup>

## V. PSYCHIATRIC TESTIMONY IN THE YATES TRIAL

Many mental health professionals were called by the defense to testify in the first Yates trial, including several of her treating clinicians. I was the primary forensic

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<sup>2</sup>TEX. PENAL CODE ANN. § 8.01(a) (Vernon 2006).

psychiatrist employed by the defense. The prosecution presented a single psychiatric expert, Dr. Park Dietz. For purposes of this Article, I will compare my testimony with that of Dr. Dietz. Dr. Dietz and I agreed on three central issues: (1) Mrs. Yates had a severe mental disease on June 20, 2001 when she drowned her children; (2) Mrs. Yates knew that drowning her children was against the law; (3) Mrs. Yates believed that killing her children was in their best interest.

My diagnosis of Mrs. Yates was that she suffered from a psychosis, schizoaffective disorder. This was based on her major depressive episodes, auditory and visual hallucinations, and paranoid delusions. Dr. Dietz did not make a specific diagnosis, but concurred that Mrs. Yates had a severe mental disease at the time that she drowned her children.

Dr. Dietz and I agreed that Mrs. Yates knew that killing her children was against the law. She waited until she was alone with the children because she knew that neither her mother-in-law nor her husband would approve of her drowning them. She called the police and expected to be arrested and executed.

Although Dr. Dietz conceded that Mrs. Yates took her children's lives because she believed that she was acting in their best interest, he nonetheless concluded with reasonable medical certainty that Mrs. Yates knew that her conduct was wrong in the eyes of the law, society, and God. It was my opinion that Mrs. Yates did not know the wrongfulness of her homicidal conduct due to her severe mental disease. My opinion was based on the following evidence:

1. Mrs. Yates believed it was right to drown her children because she held a delusional belief that her children were not being raised "righteously" and that they would "burn in hell" if she did not take their lives. She faced a psychotic dilemma. She thought that she was doing what was right for her children by arranging for them to go to heaven while they were still "innocent." She stated, "They had to die to be saved."
2. Mrs. Yates loved her children so much that she was not deterred from "saving her children's souls" by the fact that she expected to be executed by the state of Texas. She believed that because the one and only Satan was within her, that Satan would be executed along with her.
3. Mrs. Yates did not kill her children in 1999 in spite of command hallucinations to do so because she believed it was not in her children's best interest to die at that time. When she heard the "voice of Satan" instructing her to stab her children in 1999, she, instead, twice attempted suicide rather than risk harming her children. It was only when her psychosis recurred in 2001 that she came to delusionally believe that it was in her children's best interest to die. Only then did she take their lives "to save their souls."
4. Mrs. Yates made no effort to hide her crime. Her delusional belief that TV cameras were monitoring her did not stop her from killing her children in her home. Immediately after the killings, she called the police, remained at the crime scene, and requested to be punished.

5. Mrs. Yates had no alternative motive to take the lives of her children other than the psychotic belief that she was saving their souls. She was a devoted mother. She stated in her audiotaped confession on June 20, 2001, that her children were not developing correctly. She added that she was not mad at her children because they had not done anything wrong.

Dr. Dietz testified that Mrs. Yates not only knew that it was against the law to drown her children, but that she knew it was wrong in a more global sense. His evidence included the following points:

1. Mrs. Yates believed that it was Satan who put the thought in her mind to drown the children and encouraged her to do so.
2. Mrs. Yates made the decision to conceal from everyone her beliefs about Satan's presence and influence, her thoughts of harming the children, and her plan to drown the children.
3. Mrs. Yates believed that killing the children would be sinful.
4. Mrs. Yates knew at the time she killed the children that society would judge her actions as "bad."
5. Mrs. Yates knew at the time she killed the children that God would judge her actions as "bad."

In Mrs. Yates second trial in 2006, I served as a rebuttal witness after Dr. Dietz had testified. In my rebuttal testimony, I made the following points about Dr. Dietz's testimony:

1. Although Mrs. Yates received instructions from Satan to harm her children, she perceived Satan as wanting her children in hell. She believed that her children were destined to go to hell because they would be "not righteous" if she did nothing. Thus, Mrs. Yates believed that she was defeating Satan by taking her children's lives and saving their souls while they were still innocent.
2. It was my opinion that Mrs. Yates did not conceal her homicidal plan because she knew what she was doing was wrong. Instead, Mrs. Yates did not reveal any of her psychotic thinking because she believed that Satan could hear her remarks and use them against her. She believed that if she revealed her thoughts out loud, Satan would force her to kill her children.
3. Although it is true that Mrs. Yates believed that drowning her children was a sin, she believed it was a greater sin "to cause a child to stumble." She also believed that it was a sin to commit suicide. Nonetheless, Mrs. Yates twice attempted suicide in 1999 because she preferred to sacrifice her own life rather than risk harming her children. When she attempted suicide to protect her children's lives in 1999 and when she drowned her children to save their souls in 2001, Mrs. Yates was choosing the lesser of evils. Thus, she believed that killing her children was right.

4. Although it is true that Mrs. Yates thought that society would think her homicides were bad, Mrs. Yates believed that society did not know what she “knew” about the fate of her children. She knew that if her children were allowed to reach the age of accountability, her children would “burn in hell.”

5. When Dr. Dietz asked Mrs. Yates, five months after the drownings, how God would judge her killing of the children, Mrs. Yates replied that God would think it was bad. However, it is not likely that Mrs. Yates, five months after the events, could fully recapture her original state of mind when she killed her children. After five months of antipsychotic treatment, Mrs. Yates could no longer recall that she believed that she was fulfilling a biblical prophecy or that she expected to bring about the death of Satan by her own execution. Even if one accepts the premise that Mrs. Yates could resurrect her prior state of mind, she believed that killing her children was a lesser evil than causing her children “to stumble,” which would cause them to “burn in hell.”

6. Finally, I reminded the jury of the psychotic dilemma that Mrs. Yates faced at the time she drowned her children. She believed that if she did not act, her children would burn in hell for all eternity. If she did take their lives before the age of accountability, her children would be with God in heaven for all eternity. Mrs. Yates believed that taking her children’s lives was the right thing to do in the face of this dilemma.

#### VI. JURY REACTION

Because Mrs. Yates was indicted with death penalty specifications, she was tried in 2002 by a “death qualified” jury. About two thirds of the American public favors the death penalty.<sup>3</sup> In a capital case, each potential juror must agree to impose the death penalty if the facts call for it. Thus, death qualified juries tend to be more conservative and less likely to find a defendant NGRI.<sup>4</sup> Furthermore, the *Yates* jury was selected from Harris County, Texas, which is a conservative county. In fact, Harris County puts more people on death row than all but two states (Texas and Virginia) in the country.<sup>5</sup>

The jury in the 2002 Yates trial initially voted ten in favor of guilty and two in favor of NGRI. After 3.5 hours of deliberation, they found Mrs. Yates guilty. The jury took less than 30 minutes to reject the death penalty, so Mrs. Yates was sentenced to life in prison. In Texas, that meant that Mrs. Yates would not be eligible for parole for 40 years.

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<sup>3</sup>See DEATH PENALTY INFO. CTR., FACTS ABOUT THE DEATH PENALTY 4 (2007), available at <http://www.deathpenaltyinfo.org/FactSheet.pdf>.

<sup>4</sup>See Phoebe C. Ellsworth et al., *The Death-Qualified Jury and the Defense of Insanity*, 8 LAW & HUM. BEHAV. 81 (1984).

<sup>5</sup>See Mike Tolson, *A Deadly Distinction*, HOUS. CHRON., Feb. 5, 2001, available at <http://www.chron.com/disp/story.mpl/special/penalty/813783.html>.

A court of appeals overturned the first trial verdict due to an error by the psychiatric expert employed by the prosecution.<sup>6</sup> During cross-examination, Dr. Dietz was asked whether he was a script consultant for the television show “Law and Order.” He replied that he was, and then incorrectly volunteered that a “Law and Order” show had aired shortly before Mrs. Yates’s homicides in which a woman was found insane after drowning her children in a bathtub. This erroneous statement was used by the prosecutor in the cross-examination of a defense psychiatrist and again in closing arguments. The error came to light after the jury reached a verdict of guilty, but before they deliberated on whether to impose the death penalty.

The second Yates trial was heard by a jury that was not “death qualified” in the summer of 2006. The basic thrust of Dr. Dietz’s and my testimony was unchanged from the first trial. The initial vote of the second jury was eight for NGRI and four for guilty. After the jury deliberated for 12 hours, they found Mrs. Yates not guilty by reason of insanity. The jury foreman, Todd Frank, stated to a television interviewer, “We understand that she knew it was legally wrong. But in her delusional mind . . . we believed that she thought what she did was right.”<sup>7</sup>

The question arises about why the two Yates juries reached different verdicts. In my opinion, the primary reason is that the second jury was not “death qualified” and, thus, was more receptive to considering an insanity defense. Further, two other Texas mothers were found NGRI for killing their children between Mrs. Yates’s first and second trials.<sup>8</sup> The public attitude toward Mrs. Yates had become less angry and some people in Texas began to question whether her first verdict of guilty was fair.

One factor that influences juries in deciding whether to find a defendant NGRI is whether they can emotionally forgive the defendant. For this reason, prosecutors often seek to admit emotionally upsetting evidence to make the crime “unforgivable.” In the Yates case, the judge allowed into evidence videotapes of the dead children in their wet clothing in spite of protests by the defense that they had conceded the facts of the homicides. One juror in the first trial told a television interviewer that after hearing the detail about Noah telling his mother that he was sorry, he stopped listening to the rest of the trial. That juror found the evidence too upsetting to hear because he had a six year old son at home.

#### VII. SOCIETY’S ATTITUDE TOWARD THE INSANITY DEFENSE

The American public is highly skeptical about insanity defenses. Many people are concerned about defendants faking insanity.<sup>9</sup> After Charles Guiteau’s failed insanity defense in his 1882 trial for assassinating President Garfield, one verse of an American folk song went as follows:

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<sup>6</sup>Yates v. Texas, 171 S.W.3d 215, 222 (Tex. App. 2005).

<sup>7</sup>See Rick Casey, *Yates Jury Wiser than Hired Guns*, HOUS. CHRON., Aug. 2, 2006, available at <http://www.chron.com/dispatch/story.mpl/metropolitan/casey/4078005.html>.

<sup>8</sup>See Associated Press, *Religiosity Common Among Mothers Who Kill Children*, TYLER MORNING TELEGRAPH, Dec. 13, 2004, available at [http://www.zwire.com/site/news.cfm?BRD=1994&dept\\_id=339096&newsid=13548481&PAG=461&rft=9](http://www.zwire.com/site/news.cfm?BRD=1994&dept_id=339096&newsid=13548481&PAG=461&rft=9).

<sup>9</sup>See generally Phillip J. Resnick, *The Detection of Malingered Psychosis*, 22 PSYCHIATRIC CLINICS N. AM. 159 (1999).

I tried to play off insane,  
 But found it would not do,  
 The people all against me,  
 It proved to make no show.<sup>10</sup>

Most people believe that persons found insane “beat the rap.”<sup>11</sup> In reality, insanity acquittees spend more time in a psychiatric hospital, on average, than they would have spent in prison had they been convicted.<sup>12</sup> Lay people, including legislators, grossly overestimate how often NGRI is raised.<sup>13</sup> In actuality, the NGRI defense is raised in only 1% of felony indictments.<sup>14</sup> The public overestimates the frequency of insanity defenses because contested insanity cases like the Yates trial usually receive intense media coverage. Each insanity trial is a morality play in which the jury decides whether the defendant is culpable for his acts. In Ohio, insanity defenses are successful about 15% of the time.<sup>15</sup> An Oregon study showed that about 80% of successful insanity cases are uncontested; that is, the experts for the prosecution and defense agree that the defendant was insane.<sup>16</sup>

The public and the popular press have often responded with anger when a high profile defendant succeeds with an insanity defense. For example, after Daniel McNaughten was found NGRI in 1843, the following poem appeared in London newspapers:

Doctors were not subpoena'd, to shield a knave  
 From common justice, righteous retribution—  
 By flimsy, barefaced artifice, to save  
 A brutal murderer from execution—  
 To prove him mad, who'd ne'er been heard to rave,  
 Or labour under mental prostitution ;  
 To prove him mad, by theories, too wild,  
 Too weak, too silly, *to deceive a child.*<sup>17</sup>

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<sup>10</sup>CHARLES E. ROSENBERG, *THE TRIAL OF THE ASSASSIN GITEAU: PSYCHIATRY AND LAW IN THE GILDED AGE* 243 (1968) (quoting a version of “Charles J. Guiteau”).

<sup>11</sup>See Valerie P. Hans & Dan Slater, *John Hinckley, Jr. and the Insanity Defense: The Public's Verdict*, 47 *PUB. OPINION Q.* 202, 207 (1983).

<sup>12</sup>See 4 MICHAEL L. PERLIN, *MENTAL DISABILITY LAW: CIVIL AND CRIMINAL* § 9C-3.5, at 334 (2d ed. LexisNexis 1998).

<sup>13</sup>See Richard A. Pasewark & Mark L. Pantle, *Insanity Plea: Legislators' View*, 136 *AM. J. PSYCHIATRY* 222 (1979).

<sup>14</sup>See Lisa A. Callahan et al., *The Volume and Characteristics of Insanity Defense Pleas: An Eight-State Study*, 19 *BULL. AM. ACAD. PSYCHIATRY L.* 331 (1991).

<sup>15</sup>*Id.* at 335.

<sup>16</sup>See Jeffrey L. Rogers et al., *Insanity Defenses: Contested or Conceded?*, 141 *AM. J. PSYCHIATRY* 885, 886 (1984) (examining 316 Oregon criminal cases).

<sup>17</sup>DRY NURSE, *MONOMANIA XCVI*, at 54 (London, Saunders and Otley 1843).

There was public outrage when John Hinckley was found NGRI for his attempted assassination of President Ronald Reagan in 1981.<sup>18</sup> Many editorials and columnists attacked the verdict and the insanity defense. For example, Columnist Carl Rowan said, "It is about time we faced the truth that the 'insanity' defense is mostly last-gasp legal maneuvering, often hoaxes, in cases where a person has obviously done something terrible."<sup>19</sup>

Psychiatrists were not spared criticism in the Hinckley backlash. Columnist Andy Rooney, after pointing out that the five psychiatrists paid by the prosecution all testified that Hinckley was sane and the five psychiatrists for the defense all testified Hinckley was insane, put it this way:

The average person . . . can reach one of two conclusions about psychiatrists: either psychiatrists can be bought, or psychiatry is such an inexact science that it is worthless.

I don't want any psychiatrists mad at me, so I'll leave it to them to say which of those two categories they fall into.<sup>20</sup>

In reaction to the Hinckley verdict, 26 separate pieces of legislation were introduced in the U.S. Congress to eliminate or narrow the insanity defense. The upshot was the 1984 Insanity Defense Reform Act,<sup>21</sup> which narrowed the insanity test and removed the volitional arm (irresistible impulse) from the Model Penal Code insanity test<sup>22</sup> then used in most federal courts. The new law shifted the burden from the prosecutor to prove sanity beyond a reasonable doubt to instead require the defense to prove insanity by clear and convincing evidence. The Insanity Defense Reform Act also made it more difficult for insanity acquittees to be released from psychiatric hospitals.

The case of Andrea Yates is a tragedy not only for the Yates family, but for Andrea Yates herself. Even if Mrs. Yates is eventually discharged from a psychiatric hospital on conditional release, she will always carry the emotional burden of having killed her five children. Women who have killed their children while they were psychotic find it difficult to forgive themselves even after society has forgiven them by finding them insane.<sup>23</sup> The thoughts of Medea when she took the lives of her two sons after her husband, Jason, abandoned her convey the ongoing anguish of these mothers:

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<sup>18</sup>See Hans & Slater, *supra* note 11, at 202.

<sup>19</sup>Carl Rowan, *Justice System is Crazy to Allow Insanity Pleas*, PLAIN DEALER (Clev.), June 21, 1982, at B4.

<sup>20</sup>Andy Rooney, *Psychiatrists Don't Shine at John Hinkley's Trial*, COLUMBUS DISPATCH, June 14, 1982, at B3.

<sup>21</sup>Insanity Defense Reform Act of 1984, Pub. L. No. 98-473, 98 Stat. 2057 (codified as amended at 18 U.S.C. § 17 (2006)).

<sup>22</sup>MODEL PENAL CODE § 4.01(1) (1962).

<sup>23</sup>See Josephine Stanton & Alexander I. F. Simpson, *The Aftermath: Aspects of Recovery Described by Perpetrators of Maternal Filicide Committed in the Context of Severe Mental Illness*, 24 BEHAV. SCI. & L. 103, 106-07 (2006).

To die by other hands more merciless than mine.  
No; I who gave them life will give them death.  
Oh, now no cowardice, no thought how young they are,  
How dear they are, how when they first were born—  
Not that—I will forget they are my sons.  
One moment, one short moment—then forever sorrow.<sup>24</sup>

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<sup>24</sup>*The Quest of the Golden Fleece*, in EDITH HAMILTON, MYTHOLOGY 159, 178 (1942).