

Fall 2013

Changing the Narrative of Neonaticide

Julie Spain
jaspain@indiana.edu

Follow this and additional works at: <http://www.repository.law.indiana.edu/ijlse>



Part of the [Law Commons](#)

Recommended Citation

Spain, Julie (2013) "Changing the Narrative of Neonaticide," *Indiana Journal of Law and Social Equality*: Vol. 2: Iss. 1, Article 8.
Available at: <http://www.repository.law.indiana.edu/ijlse/vol2/iss1/8>

This Student Note is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in *Indiana Journal of Law and Social Equality* by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact wattn@indiana.edu.



JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington



Changing the Narrative of Neonaticide

Julie Spain*

INTRODUCTION

In the United States, the public abhors few crimes as much as those that a mother commits against her infant child. Unable to reconcile these acts with deeply-rooted beliefs that mothers are inherently nurturing and self-sacrificing, the American legal system and public typically demand harsh punishments for what they perceive to be violations of human nature. However, in the case of mothers who commit neonaticide, this trend toward harsh criminal penalties and public outrage may not be a just response to these infant deaths. Neonaticide, the killing of an infant within its first twenty-four hours of life,¹ differs from other types of infant deaths in that women who commit neonaticide are typically young and acting either out of psychotic motivators or as a result of adaptive evolution.

There are two conflicting theories about what causes these women to kill. Under the psychotic break theory, these women often suffer from symptoms that culminate in a psychotic break at the time of the infant's birth.² This psychotic break results in the spontaneous killing of the infant by its mother.³ Some experts have accepted these acts as part of a recognized syndrome called neonaticide syndrome.⁴ However, the concepts that define neonaticide syndrome have recently come under fire.⁵ Some experts now contend that women committing neonaticide do not do so

* Indiana University Maurer School of Law, Class of 2014. Notes and Comments Editor for the *Indiana Journal of Law and Social Equality* and Student Bar Association President. Special thanks to Professor Roger Levesque for his time, insight, and encouraging mentorship throughout the writing process and to Cory Spain for his unceasing support and confidence.

1. Beth E. Bookwalter, Note, *Throwing the Bath Water Out with the Baby: Wrongful Exclusion of Expert Testimony on Neonaticide Syndrome*, 78 B.U. L. REV. 1185, 1186 (1998).

2. See Shannon Farley, Comment, *Neonaticide: When the Bough Breaks and the Cradle Falls*, 52 BUFF. L. REV. 597, 614 (2004); see also Phillip J. Resnick, *Murder of the Newborn: A Psychiatric Review of Neonaticide*, 126 AM. J. PSYCHIATRY 1414, 1415 (1970).

3. Farley, *supra* note 2, at 614.

4. See *id.* at 601.

5. See Susan Hatters Friedman, James Cavney & Phillip J. Resnick, *Mothers Who Kill:*

because of mental health or psychotic reasons, but rather as a result of adaptive evolution.⁶ Under this theory, these women, typically adolescents with minimal resources,⁷ commit neonaticide because the infants are not desired and because the new mothers do not have the resources to care for the newborns.⁸ Some experts believe that this occurs as a response to external coercion rather than internal illness.⁹ Regardless of whether these deaths occur as the result of a psychotic break or evolutionary instinct, many factual similarities exist in neonaticide deaths.

However, evidence of these similarities is routinely not permitted in the criminal trials of these women.¹⁰ It also appears to be entirely absent from the public narrative about infanticide. This absence prevents those who commit neonaticide from obtaining appropriate and consistent penalties when they enter the criminal justice system. An inadequate understanding of the experiences of women committing neonaticide results in inconsistent criminal charges,¹¹ an inability of these women to present a complete defense at their trials,¹² and inconsistent sentences for factually similar crimes.¹³ Because adolescents commit neonaticide more frequently than any other group,¹⁴ the current trends in the prosecution of neonaticide should be of exceptional importance to those studying juveniles in the criminal justice system.

Criminal law reform proposals have called for remedies such as clear sentencing guidelines for neonaticide¹⁵ or the allowance of evidence regarding neonaticide syndrome into trials,¹⁶ but these suggestions have not come to fruition. This Note asserts that these reform proposals cannot come to fruition until the media changes its portrayal of neonaticide to include information about the experiences of these women leading up to the infant deaths. This information is essential in order for these women to build complete defenses and to rebut the inference that all women who commit neonaticide do so deliberately.

Part I of this Note will examine the experiences of women accused of committing neonaticide by discussing their mental states leading up to the births and deaths of their newborns, and by examining the ways that the criminal justice system

Evolutionary Underpinnings and Infanticide Law, 30 BEHAV. SCI. & L. 585, 588–89 (2012).

6. *Id.* at 586.

7. *Id.* at 588.

8. *Id.* at 588, 591.

9. *Id.* at 588.

10. Data about neonaticide rarely distinguishes between women over or under eighteen years of age. All of the data used in this Note applies to adolescent and adult women committing neonaticide unless otherwise stated.

11. *See* Friedman et al., *supra* note 5, at 592–93.

12. Farley, *supra* note 2, at 601–02; *see also* Bookwalter, *supra* note 1, at 1205–06.

13. *See* Bookwalter, *supra* note 1, at 1194–96.

14. Resnick, *supra* note 2, at 1415.

15. *See generally* United States v. Deegan, 605 F.3d 625 (8th Cir. 2010).

16. *See generally* Bookwalter, *supra* note 1.

deals with these infant deaths. Part II will examine the role played by the media in establishing a national narrative of motherhood and neonaticide, and will demonstrate the ways in which the media influences these trials and hinders the ability of the defendants to present a complete defense or obtain an unbiased criminal judgment. Finally, the conclusion of this Note will assert that better regulation of the media will be essential in improving the judicial outcomes of the women and girls accused of neonaticide.

I. INTRODUCTION TO NEONATICIDE IN THE AMERICAN CRIMINAL JUSTICE SYSTEM

A. Introduction to Neonaticide

Approximately 250 cases of neonaticide occur every year in the United States.¹⁷ Adolescents commit neonaticide more frequently than any other group of women.¹⁸ These adolescents typically share several characteristics.¹⁹ These girls are likely to be in their late teens, living with their parents, and unmarried.²⁰ They typically have a low socioeconomic status,²¹ and their personalities are passive and especially immature for their age.²² They are more socially isolated than their peers,²³ and are often victims of abuse.²⁴ The high school aged girls in this group were typically in relationships that lasted only a few weeks and often ended before the pregnancy was discovered.²⁵ Their pregnancies were most often accidental.²⁶ The

17. *Id.* at 1177.

18. See Susan Hatters Friedman, Sarah McCue Horwitz & Phillip J. Resnick, *Child Murder by Mothers: A Critical Analysis of the Current State of Knowledge and a Research Agenda*, 162 AM. J. PSYCHIATRY 1578, 1579 (2005); see also Resnick, *supra* note 2, at 1415.

19. These findings have remained consistent among studies using administrative samples and correctional populations both inside the United States and in other countries. See Friedman et al., *supra* note 18, at 1582.

20. *Id.* at 1579.

21. *Id.*

22. See Resnick, *supra* note 2, at 1416.

23. See Bookwalter, *supra* note 1, at 1193.

24. Margaret G. Spinelli, *A Systematic Investigation of 16 Cases of Neonaticide*, 158 AM. J. PSYCHIATRY 811, 812 (2001). One study of twenty-three women who committed neonaticide revealed that 47.8% of the women reported a major trauma in their childhood, while 26.1% of those women also reported abuse during adulthood. Sabine Amon, Hanna Putkonen, Ghitta Weizmann-Henelius, Maria P. Almiron, Anton K. Formann, Martin Voracek, Markku Eronen, Jenny Yourstone, Max Friedrich & Claudia M. Klier, *Potential Predictors in Neonaticide: The Impact of the Circumstances of Pregnancy*, 15 ARCHIVES WOMEN'S MENTAL HEALTH 167, 169 (2012).

25. Michelle Oberman, *Mothers Who Kill: Coming to Terms with Modern Infanticide*, 8 DEPAUL J. HEALTH CARE L. 3, 28–29 (2004).

26. Molly Karlin, *Damned if She Does, Damned if She Doesn't: De-legitimization of Women's Agency in Commonwealth v. Woodward*, 18 COLUM. J. GENDER & L. 125, 159 (2008).

experiences of these adolescents demonstrate a pattern of “powerlessness, poverty, and alienation.”²⁷ Some assert that a combination of these characteristics results in a break from reality during their pregnancy, during the birth of their children, and during the ultimate death of their newborn. Though the American media has portrayed these girls as cold-hearted killers, research has indicated that a subset of those committing neonaticide do so without reasoned intentionality.²⁸ At least one study has shown that women who commit neonaticide show an elevated rate of personality disorders, and the symptoms consistently experienced by these women have been coined neonaticide syndrome.²⁹

While not all women who commit neonaticide share the same pregnancy and birth experiences, many of them experience similar pathology leading up to and resulting in the death of their newborns.³⁰ Collectively, these experiences make up neonaticide syndrome.³¹ Upon becoming pregnant, these women experience intense fear.³² They fear public shame and the possibility that their pregnancies will be viewed as proof that they have been sexually promiscuous or irresponsible.³³ Younger girls fear parental abandonment, anger, and punishment.³⁴ They simply do not view disclosing their pregnancies as an option,³⁵ and they encounter great mental and emotional turmoil when presented with the crisis of how to handle their pregnancies. Those who commit neonaticide may attempt to conceal their pregnancies,³⁶ or their fear and depression may become so great that the women enter into a state of severe and pathological denial of their pregnancies.³⁷ These two experiences sometimes co-occur,³⁸ but pregnancy denial represents a more severe flaw in the woman’s psychological rationalization of the pregnancy. Women experiencing pregnancy denial genuinely believe that they are not pregnant, and in some cases their bodies will mask the physical symptoms of the pregnancy.³⁹ These adolescents have no awareness of their pregnancies and will maintain their denial in the face of intense questioning by peers and physical changes in their bodies.⁴⁰

27. See Friedman et al., *supra* note 18, at 1582.

28. See generally Resnick, *supra* note 2, at 1415.

29. Farley, *supra* note 2, at 601.

30. See generally Resnick, *supra* note 2, at 1415–16.

31. Farley, *supra* note 2, at 601.

32. Jennie Lusk, *Modern New Mexican Neonaticide: Tranquilizing with this Jewel/The Torments of Confusion*, 11 TEX. J. WOMEN & L. 93, 96–98 (2001).

33. See Farley, *supra* note 2, at 601.

34. See Lusk, *supra* note 32, at 96–98.

35. See Megan C. Hogan, Note, *Neonaticide and the Misuse of the Insanity Defense*, 6 WM. & MARY J. WOMEN & L. 259, 263–64 (1999).

36. Amon et al., *supra* note 24, at 168.

37. Farley, *supra* note 2, at 612.

38. Amon et al., *supra* note 24, at 168.

39. See Friedman et al., *supra* note 5, at 588.

40. Farley, *supra* note 2, at 612–13.

Neonaticide syndrome is a “clinical entity consisting of behaviors and symptoms that occur during the stages of pregnancy, delivery, and [the newborn’s death].”⁴¹ It begins with a pathological denial of and disassociation from one’s pregnancy.⁴² This denial continues until the birth of the newborn, at which point the woman cannot continue in her delusion.⁴³ Because these women are unaware of their pregnancies, the births often take place in bathrooms.⁴⁴ One study examined sixteen instances of neonaticide and found that the women experienced various atypical mental states during the birthing process.⁴⁵ It found that:

All of the women described “watching” themselves during the birth. Eleven denied pain, and five described the pain as “not bad.” Twelve women experienced dissociative hallucinations as an internal commentary of critical and argumentative voices. Fourteen women experienced brief amnesia, and nine of those women described associated psychotic symptoms at the sight of the infant. Upon reintegration, the women could not account for the dead infant.⁴⁶

Upon the birth of the infant, these women experience a “brief psychotic break” that either results in the neglect of the newborn or in the mother actively killing the newborn.⁴⁷ Though the media portrays the mothers as being unfeeling during these deaths, under the theory of neonaticide syndrome, the deaths of these newborns are more likely the result of terror, panic, or fury that the adolescents experience during this psychotic break.⁴⁸ The mother does not view the newborn as her child, but rather as a “foreign body” that must be eliminated.⁴⁹ Some women lose consciousness while giving birth, causing those newborns who end up being born while the mother is seated on a toilet to drown.⁵⁰ Other women who commit neonaticide, especially young girls, may panic about someone discovering the birth and neglect the newborn in a panicked attempt to clean up the area in which they gave birth.⁵¹ Others respond to this panic and fear by actively killing their newborns.⁵² Mothers who actively kill their infants, as opposed to neglecting the newborn

41. *Id.* at 612.

42. *Id.* at 612–13.

43. *Id.* at 613.

44. *Id.*

45. *See Spinelli, supra* note 24, at 811–12.

46. *Id.* at 811.

47. *See* Judith E. Macfarlane, Note, *Neonaticide and the “Ethos of Maternity”: Traditional Criminal Law Defenses and the Novel Syndrome*, 5 *CARDOZO WOMEN’S L.J.* 175, 199 (1998).

48. *See id.* at 184.

49. *Id.* at 197.

50. *See Oberman, supra* note 25, at 30.

51. *Id.* at 30.

52. *Id.*; *see also* Bookwalter, *supra* note 1, at 1196.

until it passes away, often receive significantly greater sentences.⁵³ However, these killings may have been no more premeditated than the births themselves.⁵⁴ The extreme facts regarding how the newborns were killed in these cases likely do not indicate any additional malice toward the newborn—under the theory of neonaticide syndrome, they are merely different responses of women suffering from the same syndrome.

The evolutionary adaptive theory of neonaticide does not challenge the denial experienced by the pregnant women or the potential for them to be physically unaware of their pregnancies.⁵⁵ It breaks down the denial experienced by these women into three different types: affective denial, pervasive denial, and psychotic denial.⁵⁶ Affective denial results in an emotional denial of a pregnancy, though the woman maintains cognitive awareness of the pregnancy.⁵⁷ Pervasive denial can result in physical and mental denial of pregnancy combined with masked symptoms of the pregnancy.⁵⁸ Psychotic denial, the most severe type, is claimed to be more rare and more likely to occur in women with histories of schizophrenia.⁵⁹ This theory asserts that, due to external coercion and an inability to raise the newborn, these women instinctively kill the newborns.⁶⁰

B. Courts' Response to Neonaticide

While most western countries have developed infanticide legislation to deal with the unique circumstances surrounding these deaths,⁶¹ the United States has no such legislation. Instead, neonaticide is prosecuted as anything from the unlawful disposal of a body to first-degree murder.⁶² In countries with infanticide legislation, women committing any type of infanticide will typically receive probation or commitment to a facility that can address their mental health issues.⁶³ Many of these countries do not require any formal diagnosis of a mental health issue in order for the women to receive such treatment.⁶⁴ These more lenient sentences arguably reflect international awareness of the “biological vulnerability” of pregnant women caused by, among other things, hormonal changes that occur with any pregnancy.⁶⁵

53. See, e.g., *United States v. Deegan*, 605 F.3d 625, 644 (8th Cir. 2010).

54. See, e.g., *id.*

55. Friedman et al., *supra* note 5, at 588.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. See *id.*

61. See Spinelli, *supra* note 24.

62. Oberman, *supra* note 25, at 31.

63. Spinelli, *supra* note 24, at 811.

64. See Friedman et al., *supra* note 5, at 587.

65. Spinelli, *supra* note 24, at 812.

The findings regarding the low rates of mental health issues among those committing neonaticide may shed some light on the United States' lack of special legislation or leniency for these deaths. Some proponents of evolutionary adaptation theory have explained their opposition to these lenient international laws by explaining that "to excuse depressed, manic or psychotic women who kill their newborns at the time of giving birth" benefits the wrong population.⁶⁶

However, the United States' lack of infanticide or neonaticide legislation means that those accused of committing neonaticide are inconsistently charged.⁶⁷ In some cases, no charges are brought at all.⁶⁸ In most cases, the initial charges are pled down to a lesser offense.⁶⁹ Sentencing varies greatly from state to state,⁷⁰ and these women may receive anything from probation to life in prison.⁷¹ Such inconsistent sentences for acts that are often very factually similar must raise a question about whether justice is being achieved in these cases.⁷² Further, these inconsistencies and unpredictable trials indicate that our criminal justice system is not operating as efficiently as it could be.

Some commentators have noted the problematic nature of inconsistent sentencing at the federal level.⁷³ The federal sentencing guideline drafters did not contemplate acts such as neonaticide,⁷⁴ and the guidelines do not take into consideration mitigating factors such as a woman experiencing a psychotic break immediately prior to the birth. At least one commentator has advocated for new and explicit sentencing guidelines for neonaticide offenses.⁷⁵ However, this proposal has not been implemented.⁷⁶ Clear sentencing guidelines would decrease the inconsistencies in criminal punishments that women experience. However, they would not improve the ability of these women to exercise their Sixth Amendment rights at trial. Because consistent sentencing measures do not assist women during the trial stage of the criminal process, they can serve as only one piece of a larger reform strategy.

Women whose cases go to trial encounter numerous obstacles as they attempt to exercise their Sixth Amendment right to present a complete defense. First, while the defendants can sometimes present evidence that other women have had

66. Friedman et al., *supra* note 5, at 594.

67. See Spinelli, *supra* note 24.

68. Oberman, *supra* note 25, at 31.

69. *Id.* at 92–93.

70. See Bookwalter, *supra* note 1, at 1194–96 (comparing cases from Ohio, Louisiana, and New York).

71. Oberman, *supra* note 25, at 31.

72. See Bookwalter, *supra* note 1, at 1194.

73. Margaret Ryznar, *A Crime of Its Own? A Proposal for Achieving Greater Sentencing Consistency in Neonaticide and Infanticide Cases*, 47 U.S.F. L. REV. 459, 462 (2013).

74. See *United States v. Deegan*, 605 F.3d 625, 646–47 (8th Cir. 2010); see also Ryznar, *supra* note 73, at 462.

75. Ryznar, *supra* note 73, at 462–63.

76. See *Deegan*, 605 F.3d at 625.

similar experiences during their pregnancies before committing neonaticide, the defendants cannot present a “psychological profile” linking the symptoms to a specific syndrome.⁷⁷ Evidence about neonaticide syndrome is generally inadmissible in courts for several reasons. At least one court has refused to admit this evidence because neonaticide syndrome has not undergone and passed the *Frye* or *Daubert* admissibility tests.⁷⁸ The fact that some disagree about whether this pattern of behavior meets the requirements for a syndrome and that neonaticide syndrome has not been published or verified by many medical experts has also hurt its chances for admissibility.⁷⁹ Lack of empirical evidence has prevented some state courts from recognizing neonaticide syndrome.⁸⁰ Finally, a lack of understanding about the difference between the symptoms involved in neonaticide syndrome and those constituting postpartum depression has led at least one court to decide that the cost of having an out-of-state expert testify in these cases is too high to justify allowing the testimony if a local postpartum expert is available.⁸¹

Even though neonaticide syndrome may not be the predominant theory explaining these deaths, several of its relevant symptoms are still accepted in the medical community and may decrease the legal culpability of these women. For instance, defendants may wish to present evidence about the physical or mental denial of their pregnancies as part of their defenses. Unfortunately, the experts brought into trial rarely specialize in neonaticide, and they consequently do not have sufficient knowledge to testify on behalf of the defendants. Instead, experts often specialize in postpartum depression or more common mental illnesses that are not linked to pregnancy. Because the experiences of women committing neonaticide do not fall neatly into insanity defenses,⁸² a failure to admit evidence about the frequency with which others experienced similar symptoms means that defendants can only testify about what they experienced during their own pregnancies and birthing processes.⁸³ This cripples their credibility as witnesses, and consequently their defenses.

Any expert witnesses who do testify for the defendants will have similar credibility issues because they will be unable to support their assertions that these women experienced symptoms such as denial of pregnancy or a temporary psychosis that led to the newborn’s death with evidence that other pregnant women have

77. See *People v. Wernick*, 674 N.E.2d 322, 323 (N.Y. 1996).

78. *Id.*

79. Macfarlane, *supra* note 47, at 218.

80. *Strawbridge v. Lord*, No. 9:04-CV-0268, 2012 WL 1036089, at *4 (N.D.N.Y. Mar. 27, 2012).

81. See *Commonwealth v. Dupre*, 2005 PA Super. 12, ¶ 22, 866 A.2d 1089, 1103.

82. Some experts contend that the experiences of these women are more properly defined as personality disorders rather than mental illnesses. Amon et al., *supra* note 24, at 168.

83. See Bookwalter, *supra* note 1, at 1205.

experienced these same symptoms.⁸⁴ Because suspicion of these women is so high and some of the ways in which the newborns are killed are quite gruesome, information about the theories behind these deaths is essential to combat the misconception that these defendants are trying to escape liability for deliberate murder.⁸⁵ A failure to admit this evidence allows the jury to think that the defendant's experiences were unique,⁸⁶ thus placing a prejudicial burden on the defendant to prove the pervasive nature of her symptoms in neonaticide cases.⁸⁷ The courts' failure to admit expert witness testimony as evidence that many women committing neonaticide experience a similar pathology before the deaths occur infringes on the Sixth Amendment rights of these defendants to present a complete defense.

Further, a blanket restriction on evidence regarding neonaticide syndrome in these trials means that these women are unable to obtain the medical treatment that they may need.⁸⁸ When adolescents are on trial after committing neonaticide, the court is often required to effectively step into the shoes of parents to make a decision that protects both society and the juvenile in the courtroom. In order to do so, the court must have all of the relevant information in front of it. Though some medical experts assert that the majority of those committing neonaticide do not suffer from psychosis or insanity, the interests of justice should demand that a judge has information about the similar experiences of those who commit neonaticide available for assessment. Prison sentences are a more common punishment than commitments to psychiatric facilities.⁸⁹ Without information about the prevalence of the symptoms experienced by these women at the sentencing stage of the criminal trial, proper mental health treatment cannot be ordered when it is needed. Consequently, those who are suffering from mental illness or personality disorders will end their prison terms with the same or worse pathology than they had at the time that they committed neonaticide.⁹⁰ Thus, the criminal justice system fails to offer rehabilitation services where they may be both necessary and effective.

II. MURDER AND THE MEDIA

A. *The Changing Cultural Ideology About Motherhood*

The media plays an under-assessed but highly influential role in determining how the legal system addresses neonaticide. To understand the media's role in these trials, groundwork must first be laid about how western civilization's cultural

84. See *People v. Wernick*, 674 N.E.2d 322, 323 (N.Y. 1996).

85. See generally Bookwalter, *supra* note 1, at 1194–96.

86. *Id.* at 1205.

87. *Id.* at 1192.

88. See Macfarlane, *supra* note 47, at 182.

89. Resnick, *supra* note 2, at 1418.

90. Spinelli, *supra* note 24, at 812.

beliefs about motherhood have developed and changed over the past two decades. In a study about this topic, Emma Cunliffe focused on how Australia has addressed unexplained infant deaths over the past several decades.⁹¹ Her study revealed a strong connection between the media's portrayal of these deaths, the medical theories about how they occur, and bias in the courtroom.⁹²

An analysis of the increasing criminalization of women whose infants die suddenly will illustrate this point. In the 1970s to 1990s, families who experienced Sudden Infant Death Syndrome (SIDS) were looked upon with sympathy.⁹³ In the 1970s, Alfred Steinschneider's theory posited that SIDS was a tragic occurrence that was related to prolonged apnea issues in infants.⁹⁴ This theory was well accepted, and scientists largely focused their SIDS research on the syndrome's apnea-related causes.⁹⁵ In 1994, the mother whom Steinschneider had written about in his research as having suffered five SIDS deaths in her family confessed to having murdered each of her children.⁹⁶ Though she later recanted her confession, it gained enormous publicity and caused widespread suspicion about how many other mothers had gotten away with murder.⁹⁷

Suddenly, medical researchers and the legal community alike experienced a dramatic cultural shift in how they viewed mothers whose children had experienced SIDS.⁹⁸ The cultural ideology about motherhood shifted to one of distrust, and the prevailing theory of SIDS investigation shifted from a medical one (positing that the deaths were linked to apnea) to a legal one that looked at mothers suspiciously.⁹⁹ Newspapers, medical journals, and the general public all began to view SIDS as a cover for murder.¹⁰⁰ Though mothers whose young children unexpectedly died had historically been viewed with some amount of sympathy,¹⁰¹ the general public and legal scholars began to view child homicide as the most morally heinous crime in existence, deserving of the harshest criminal punishment.¹⁰² Criminalization of women whose infants had died of unknown causes increased,¹⁰³ and medical experts shifted their work from looking for apnea-related causes of these deaths to seeking out signs of foul play.¹⁰⁴

91. EMMA CUNLIFFE, *MURDER, MEDICINE AND MOTHERHOOD* 25–67 (2011).

92. *Id.* at 193–206.

93. *Id.* at 11.

94. *Id.* at 30.

95. *Id.* at 30–31.

96. *Id.* at 35.

97. *Id.* at 35–36.

98. *Id.*

99. *Id.*

100. *Id.* at 12.

101. *Id.* at 11.

102. *Id.* at 12.

103. *Id.* at 12–13.

104. *Id.* at 36.

As the cultural story of motherhood has changed, the way that society judges and categorizes specific mothers has changed as well.¹⁰⁵ Society often equates inadequate mothering with criminal liability.¹⁰⁶ If an infant passes away and the mother is found to have neglected it during its life, society instantly suspects the mother of murder.¹⁰⁷ These suspicions often have no basis in evidence, but they exhibit a deeply rooted and often unconscious bias. This bias makes its way into the courtroom during the trials of these accused women, and the media's role in creating it must be closely scrutinized. Journalists necessarily enjoy a great amount of freedom in the way that they report the news, but some restraint may be necessary when this freedom has an abnormally high ability to place the rights of citizens accused of crimes at risk.

B. The Media's Role in Increasing the Criminalization of Adolescent Mothers

Because the public gets the bulk of its information about the criminal justice system in general, as well as about specific criminal trials from the media, the media's lack of restraint can have devastating consequences for the women accused of having murdered their newborn infants. The media is the vehicle that brings information, such as the confession of the mother from Steinschneider's case study, into the general public's awareness.¹⁰⁸ Its presentation of this sensitive information guides the public discourse about these deaths. It reaches the individuals who may be jurors, judges, or experts testifying at trials. Cunliffe's study demonstrates several ways in which this biases courtrooms and jeopardizes defendants' rights.¹⁰⁹ The risk for injustice is higher with these trials because, while the facts underlying the crimes may shock the conscience, they may be more indicative of severe mental distress than of malice or intent.

While reporting of crimes is an essential part of society, the way in which these crimes are being reported gives cause for concern. Freedom of speech necessarily prevents journalists from having stringent accountability mechanisms in place to regulate their reporting. Though some amount of accountability exists through state regulatory laws involving defamation and privacy tort actions, the application of First Amendment doctrine has caused these remedies to apply only in the most extreme of circumstances.¹¹⁰

Most journalists have adopted the "voluntarily embraced" code of ethics

105. *Id.* at 100.

106. *See id.* at 101.

107. *Id.* at 37.

108. *See id.* at 157–90.

109. *See id.*

110. Richard T. Karcher, *Tort Law and Journalism Ethics*, 40 *LOY. U. CHI. L.J.* 781, 782–83 (2009).

from the Society of Professional Journalists,¹¹¹ but a survey indicating that 62% of journalists believe that journalism is going in the wrong direction shows that not even journalists themselves feel these standards are sufficient to hold the journalism community accountable for its reporting.¹¹² One part of the code of ethics requires journalists to “seek truth and report it,” and to be honest, fair, and courageous in their reporting.¹¹³ This has been described as the most crucial of journalists’ obligations because the press controls the public’s reception of news, and it has the first opportunity to color the way in which the public will receive new information.¹¹⁴ Journalists are further instructed to ensure that they are properly representing the news and avoiding sensationalism.¹¹⁵ However, the code of ethics has no external enforcement mechanism.¹¹⁶ Consequently, it may fail as a tool for holding journalists accountable for abiding by the standards to which they profess to adhere.

While many well-respected journalistic organizations exist, a new type of widely read media known as “infotainment” has emerged that draws consumers into its news articles with gimmicks such as highly emotional language or photographs of victims.¹¹⁷ Rather than avoiding sensationalism, popular infotainment organizations feed on it.¹¹⁸ Infotainment articles feature a mixture of entertainment and educational pieces, and they further strain journalism ethics, as the goal of infotainment is entertainment rather than enlightenment.¹¹⁹ The benefits of infotainment news include increased public interest in national events and increased revenue to news services, but the drawback is a severe blow to journalistic integrity that poses a risk to both infotainment organizations as well as serious journalistic agencies. Infotainment news presents information in a way that impairs the public’s ability to separate fact from opinion.¹²⁰ It also lends itself toward an adversarial reporting style that reinforces anger and baseless stereotypes.¹²¹ Infotainment news organizations use headlines intended to outrage rather than inform, such as “Accused Waukegan tot killer pleads not guilty.”¹²² Rather than seeking enlightenment

111. See *Code of Ethics*, SOC’Y OF PROF’L JOURNALISTS (1996), <http://www.spj.org/pdf/ethicscode.pdf> (Dec. 13, 2013).

112. Karcher, *supra* note 110, at 845.

113. *Code of Ethics*, *supra* note 113.

114. Karcher, *supra* note 110, at 792.

115. See *Code of Ethics*, *supra* note 111.

116. Karcher, *supra* note 110, at 782–83.

117. See *id.* at 797.

118. See *id.* at 781–82, 797–98.

119. See *id.* at 797.

120. See *id.*

121. *Id.* at 797–98.

122. See, e.g., Beth Kramer, *Accused Waukegan Tot Killer Pleads Not Guilty*, LAKE COUNTY NEWS-SUN, Oct. 27, 2012, <http://newssun.suntimes.com/news/15372453-418/accused-waukegan-tot-killer-pleads-not-guilty.html>.

about issues or additional information, readers start looking for someone to blame when they read these articles.¹²³ Infotainment news causes consumers to become more accusatory, more suspicious, and quicker to judge someone as guilty based on minimal facts. Citizens expect the press to serve as a “watch dog” and to prioritize accurate reporting over commercial gain, but whether infotainment organizations do this is extremely questionable.¹²⁴ Infotainment organizations are one of the key vehicles through which biases toward women accused of killing their children spread across the country.

Cunliffe’s study also followed two Australian newspapers as they covered the arrest, trial, and sentencing of a woman who had been accused of murdering her four infants.¹²⁵ Cunliffe followed one “popular” newspaper and one “quality” newspaper.¹²⁶ She defined a “popular” newspaper as one that presented information in an emotional and attention-grabbing manner.¹²⁷ Similar to American infotainment or tabloid journalism, these newspapers strive to portray information in an entertaining manner.¹²⁸ In contrast, “quality” newspapers focus on producing high quality, “literary work.”¹²⁹ They pay close attention to language and accuracy of content.¹³⁰ Given that the United States has a similar structure to its media, this study provides important insight into the relationship between news reporting and bias in criminal trials.

Cunliffe compiled extensive data about the methods used by both newspapers in their reporting.¹³¹ She found that expert testimony was selectively reported in both papers,¹³² and that the popular newspaper went as far as to mix fact with fiction in its narratives about the trial.¹³³ Rather than reporting events the way they unfolded during the trial, both newspapers carefully tailored the events in a way that would draw in more readership. Though the defendant put forth what Cunliffe felt to be a robust defense, the papers portrayed this defense as if it were virtually nonexistent.¹³⁴

Distinguishing the two newspapers, Cunliffe found that the popular newspaper used more sensational reporting techniques, such as printing photos of the children and writing that the mother’s acts resulted from “latent wickedness” after

123. Karcher, *supra* note 110, at 797.

124. *Id.* at 790–91.

125. CUNLIFFE, *supra* note 91, at 158.

126. *Id.* at 168.

127. *See id.*

128. *Id.*

129. *See id.*

130. *Id.*

131. *Id.* at 157–90.

132. *Id.* at 172–73.

133. *Id.* at 184.

134. *Id.* at 157–90.

she was sentenced.¹³⁵ The popular newspaper presented less synthesized reporting of day-to-day events, while the quality newspaper attempted to synthesize the events.¹³⁶ While the popular newspaper criminalized the mother, the quality newspaper asked whether society had failed the children and looked broadly at child investigations.¹³⁷ By including longer excerpts of the trial testimony, the quality newspaper allowed readers to see what evidence was actually presented at the trial and how it was used.¹³⁸ By explicitly passing judgment on the mother's "wickedness," the popular newspaper changed the function of the reader from fact analyst to fact consumer.

These popular, or infotainment, organizations fail to publish facts that would provide the counterargument to their assertions, and they teach consumers to accept journalists' judgments without a careful assessment of the criminal cases that they describe. By publicly labeling these women as killers and murderers, while failing to report facts such as the mental health defenses presented at their trials, infotainment organizations create a skeptical culture that is more prepared to pick up its torches and pitchforks than it is to digest information that may absolve these women of some level of criminal liability. This type of reporting violates the journalistic ethical commitment to avoiding sensationalism and reporting the truth.

This narrative, heard in pieces over time by jurists, medical researchers, attorneys, and judges, also has detrimental results on the fairness of the trials of women who are charged with the deaths of their newborns. Cunliffe's research demonstrates that the method used by infotainment reporters when covering these trials has promoted an ideology of motherhood based on incorrect stereotypes. The preconception that a person has about motherhood and familial structures will affect the way that individuals allocate criminal responsibility.¹³⁹ These news organizations assume that mothers are naturally nurturing and assert that a mother whose infant dies must be criminally responsible for its death.

These beliefs make their way into the courtroom through several avenues. First, they may affect the assumptions made by those responsible for medical research. As individuals seek a criminal explanation, those researching these deaths may attempt to do the same, as evidenced in the 1990s with SIDS research. Second, witnesses, including expert witnesses, may increase the confidence in their assertions as a trial progresses due to their desire to secure a conviction. Cunliffe asserts that this is exactly what happened in the trial that she followed.¹⁴⁰ Finally, these assumptions enter the courtroom with every juror who reads and is influenced by infotainment organizations. Such rampant bias places a defendant's Sixth Amendment

135. *Id.* at 170.

136. *Id.* at 168–71.

137. *Id.* at 170.

138. *Id.* at 178.

139. *Id.* at 194.

140. *Id.*

rights in grave danger.

C. Moving Forward

Journalistic accountability will be essential in changing the narrative of neonaticide to one that prepares the public to consider the role of mental illnesses in these deaths. If the media presents these cases in a way that forecloses the possibility of mental illness or conditions such as neonaticide syndrome, then citizens cannot be expected to change their mindset simply because they have entered the courtroom. Those advocating for further research or education about neonaticide can have no better ally than the media, which has the unique ability to start a national dialogue about the syndrome and its role in neonaticide. The unbiased reporting of neonaticide will also aid parents of adolescents who commit the crime by allowing them to better understand the experience of their children. This understanding is essential in order for parents to play a role in their children's rehabilitation and for parents to help these youth exercise their Sixth Amendment right to present a complete defense.

Unfortunately, women committing neonaticide have few remedies against the sensationalism of the press. Defamation remedies can be obtained only in the most extreme of cases, as defendants need only prove that their statements are technically true to avoid liability.¹⁴¹ However, the tort claim of false light may provide a more sufficient remedy.¹⁴² Truth of facts is not a defense in a false light action, and a defendant may be liable for the one-sided or misleading presentation of facts.¹⁴³ The standard for a false light claim is also lower than the one that must be met in a defamation suit; a plaintiff in a false light claim need only prove that the facts would be "highly offensive to a reasonable person."¹⁴⁴

The tort of false light would effectively punish violations of the code of ethics that journalists are expected to follow. It is fair to journalists because it does not restrain their freedom of speech any more than they have already agreed to restrain it when they abide by the Society of Professional Journalists' code of ethics. Also, it protects the privacy and mental health of adolescents who are in vulnerable positions, and it will ensure that news agencies report a more factually accurate version of neonaticide. The downside of the false light claim is that less than half of the states still allow this claim.¹⁴⁵ In order for it to be effective, the false light claim would have to be revived in all states.

The media's power over the cultural understanding of these infant deaths combined with the difficulty of enforcing journalistic standards of ethics serves as

141. Karcher, *supra* note 110, at 786.

142. *Id.* at 788.

143. *Id.*

144. *Id.* at 789.

145. *Id.*

possibly the strongest argument for allowing experts to submit evidence of neonaticide syndrome in court. Even if media reform measures are implemented in the United States, changing the narrative of neonaticide will take time. Cunliffe's study serves as a powerful warning about the real connection between the media's portrayal of events and the criminal trials of defendants. When defendants are faced with permanent stigma and criminal sentences that may last decades, the stakes are too high to prohibit experts from testifying about medical research that counters the assumptions and biases that jurors, judges, and attorneys alike bring into the courtroom.

CONCLUSION

Enforcing violations of the journalistic code of ethics through tort law is only the first step in ensuring that information about the coercion, isolation, and denial experienced by women committing neonaticide is incorporated into the national narrative. Neonaticide experts, mental health experts, and other juvenile advocates must each commit to advocating for this information to be included in infotainment organizations and scholarly publications alike. If parents are to obtain any aid from the state in their efforts to identify signs of trouble in their adolescents, then this information must become widely available in order to stimulate conversations about prevention and rehabilitation.

While improving accountability for journalists will not immediately change the country's perception of these crimes or the court's response to women who kill their newborns, it will allow for a more honest dialogue about these crimes and about the experiences of women leading up to the crimes. A more open and honest national dialogue will lead to more appropriately targeted medical research, less bias infiltrating the judicial system through expert testimony, and better judicial outcomes for women who are criminally charged for the deaths of their newborns.