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## ARTICLES

### DENIAL AND CONCEALMENT OF UNWANTED PREGNANCY: “A FILM HOLLYWOOD DARED NOT DO.”<sup>1</sup>

SUSAN AYRES AND PREMA MANJUNATH\*

When five women in France killed their newborns over a period of seven years, the country perceived an epidemic of neonaticide.<sup>2</sup> One of the women, Dominique Cottrez, buried eight newborns in her garden; another, Véronique Courjault, hid two bodies in her freezer and burned a third in her fireplace.<sup>3</sup> These shocking French accounts involved older mothers who killed multiple newborns,<sup>4</sup> whereas American accounts typically involve younger mothers who killed a single newborn,<sup>5</sup> such as nineteen-year-old

<sup>1</sup> JUST ANOTHER GIRL ON THE I.R.T. (Miramax Films/ Truth 24 F.P.S 1992) (end credits).

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<sup>2</sup> Bruce Crumley, *Why Are French Women Killing Their Babies?*, TIME, July 29, 2010, available at [www.time.com/time/printout/0,8816,2007359,00.html](http://www.time.com/time/printout/0,8816,2007359,00.html). Neonaticide is defined as killing a newborn within the first twenty-four hours after birth. Margaret G. Spinelli, *Neonaticide: A Systematic Investigation of 17 Cases*, in INFANTICIDE: PSYCHOSOCIAL AND LEGAL PERSPECTIVES ON MOTHERS WHO KILL 105, 105 (Margaret G. Spinelli ed., 2003).

<sup>3</sup> Crumley, *supra* note 2.

<sup>4</sup> *Infanticide Is a Horribly Familiar Story in France*, BELFAST TELEGRAPH, July 30, 2010, available at <http://www.highbeam.com/doc/1P2-25431247.html>.

<sup>5</sup> The median age of mothers who kill newborns in America is reported to be nineteen. MICHELLE OBERMAN & CHERYL L. MEYER, *MOTHERS WHO KILL THEIR CHILDREN: UNDERSTANDING THE ACTS OF MOMS FROM SUSAN SMITH TO “PROM MOM”* 47 (2001). Like the French cases involving multiple newborns, some American cases also involve multiple newborns. For instance, one American mother

college golf star, Kathryn McCoy.<sup>6</sup> Although McCoy's roommates at Bellarmine College in Kentucky suspected she might be pregnant, they did not confront her about it.<sup>7</sup> McCoy concealed her pregnancy and delivered the baby in a dorm bathroom.<sup>8</sup> She continued to deny that she had given birth even after one of her friends discovered the baby in a trash bag and even after police arrived to search her room.<sup>9</sup> She later told detectives she thought the baby was not born alive,<sup>10</sup> and this proved to be a successful defense at her trial.<sup>11</sup> Ultimately, she was acquitted of murder, but was found guilty of the lesser charge of tampering with evidence.<sup>12</sup>

Whether here or abroad, each neonaticide case, such as Courjault's or McCoy's, raises the same question: "How could she?"<sup>13</sup> This question, "the headline *du jour* whenever a horrific case emerges,"<sup>14</sup> is often answered by the stock narrative that the mother must be an unnatural monster or helpless victim.<sup>15</sup> For instance, an editorial about McCoy notes that "[l]etters to newspapers, man-on-the-street TV interviews, and extensive blogosphere ruminations indicate little sympathy for this unwed college student who found herself in a difficult moral and ethical predicament."<sup>16</sup> Others more sympathetically speculate that McCoy's "predicament" may have been due to Catholic beliefs against abortion and fear of losing her golf and academic scholarships.<sup>17</sup> These stock narratives are perpetuated in part by a

charged with killing three newborns was Christy Freeman, in Maryland. *Murder Charges Dismissed Against Maryland Mother*, THE NEWS JOURNAL, Sept. 20, 2007, at A1. Authorities created a sensation that shocked the town of Ocean City, Maryland, when they arrived with backhoes to dig up the property searching for other remains. *Id.* The charges were later dropped because the medical examiner could not determine whether the premature fetuses were born alive. *Id.*

<sup>6</sup> Brett Barrouquere, *Mother Charged in Baby's Death: College Student Hid Pregnancy*, KENTUCKY POST, Oct. 26, 2007, at A2.

<sup>7</sup> *Id.*

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

<sup>9</sup> *Id.*

<sup>10</sup> Ben Jackey, *Defense Rests in Newborn Murder Trial: Katie McCoy Does Not Testify*, WLKY.COM, Mar. 20, 2009, [www.wlky.com/print/18974965/detail.html](http://www.wlky.com/print/18974965/detail.html).

<sup>11</sup> Thomas McAdam, *Did Katie McCoy Murder Her Baby?* LOUISVILLE CITY HALL EXAMINER, Mar. 24, 2007, [www.examiner.com/x-3747-Louisville-City-Hall-Examiner~y2009m3d24-Did-Katie-McCoy-murder-her-baby?](http://www.examiner.com/x-3747-Louisville-City-Hall-Examiner~y2009m3d24-Did-Katie-McCoy-murder-her-baby?)

<sup>12</sup> *Id.*

<sup>13</sup> Jocelyn Noveck, *Moms Killing Kids Not Nearly as Rare as We Think*, THE ASSOCIATED PRESS, Apr. 17, 2011, available at [http://www.msnbc.msn.com/id/42634832/ns/us\\_news-crime\\_and\\_courts/t/moms-killing-kids-not-nearly-rare-we-think](http://www.msnbc.msn.com/id/42634832/ns/us_news-crime_and_courts/t/moms-killing-kids-not-nearly-rare-we-think).

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

<sup>15</sup> BELINDA MORRISSEY, WHEN WOMEN KILL: QUESTIONS OF AGENCY AND SUBJECTIVITY 1 (2003).

<sup>16</sup> McAdam, *supra* note 11.

<sup>17</sup> *Id.*; *Student Charged with Killing Own Baby Back in Court*, WLKY.COM, Mar. 21, 2008, [www.wlky.com/print/15667821/detail.html](http://www.wlky.com/print/15667821/detail.html). A police officer stated that "After the body was discovered . . . [she] stated, 'I couldn't have nobody know about this, I'm only 19, I'm an athlete.'" *Id.*

lack of official records,<sup>18</sup> which promotes a sense of panic and epidemic each time the media sensationalizes these stories.<sup>19</sup>

The actual cases and two films examined in this essay challenge stock narratives of mothers who deny or conceal unwanted pregnancy as a monster, or a victim, and also challenge “legal norms, logic and structures” pertaining to unwanted pregnancy and neonaticide.<sup>20</sup> This essay draws on films because of their influential power to “reach enormous audiences by combining narratives and appealing characters with visual imagery and technological achievement, . . . stir deep emotions and leave deep impressions.”<sup>21</sup> For these reasons, Orit Kamir asserts that films are more compelling than “theoretical legal texts or even judicial rhetoric.”<sup>22</sup>

The two films examined—*Stephanie Daley*<sup>23</sup> and *Just Another Girl on the I.R.T.*<sup>24</sup>—challenge social and legal norms, and provide insight into “society’s dominant cultural formations” and the way “society narrates and creates itself,” specifically with respect to unwanted pregnancy.<sup>25</sup> Neither film offers an upbeat representation such as that found in *Juno*, in which a teenager accepts her pregnancy and makes an adoption plan.<sup>26</sup> Instead, both *Stephanie Daley* and *Just Another Girl on the I.R.T.* depict the more harrowing narrative of teenagers who do not accept pregnancy, but conceal or deny it, and then abandon or kill the newborn. These films dramatize stories Hollywood “dare[s] not to do.”<sup>27</sup>

Hilary Brougher explained that in writing *Stephanie Daley* she wanted to “open up events that we are accustomed to dealing with in the media in an emotionally charged yet superficial way—and rather than delivering a

<sup>18</sup> Like America, France does not keep official records about the number of newborns killed each year. Mary Overpeck, *Epidemiology of Infanticide*, in *INFANTICIDE: PSYCHOSOCIAL AND LEGAL PERSPECTIVES ON MOTHERS WHO KILL* 19, 23–24 (Margaret G. Spinelli ed., 2003) After 1991, records exist indicating the number of infants that died on the first day of life; however, these records are based on birth certificates, and in many cases of neonaticide there is not a birth certificate because they are unattended births. *Id.*

<sup>19</sup> See, e.g., Nellie Pou, *Ending the Outbreak of Throwaway Babies*, Editorial, *STAR-LEDGER*, July 31, 1997, at A24; see also, Carol Sanger, *Infant Safe Haven Laws: Legislating in the Culture of Life*, 106 *COLUM. L. REV.* 753, 785–87 (2006).

<sup>20</sup> Orit Kamir, *Why ‘Law-and-Film’ and What Does it Actually Mean? A Perspective*, 19 *CONTINUUM: J. MEDIA & CULTURAL STUD.* 255, 268–69 (2005).

<sup>21</sup> *Id.* at 272.

<sup>22</sup> *Id.*

<sup>23</sup> *STEPHANIE DALEY* (Redbone Films/ Silverwood Films Production 2006).

<sup>24</sup> *JUST ANOTHER GIRL ON THE I.R.T.*, *supra* note 1.

<sup>25</sup> Kamir, *supra* note 20, at 256.

<sup>26</sup> *JUNO* (Fox Searchlight Pictures 2007).

<sup>27</sup> *JUST ANOTHER GIRL ON THE I.R.T.*, *supra* note 1.

verdict about it, open up the gray areas for discussion.”<sup>28</sup> Why do these girls kill newborns? Why didn’t anyone realize they were pregnant? How should they be punished?

This essay examines these questions through the lens of Kamir’s three critical perspectives: cinematic parallels, cinematic judgments, and cinematic jurisprudence.<sup>29</sup> Kamir first points out that films may parallel culture and the legal system.<sup>30</sup> These cinematic parallels “reflect and refract the fundamental values, images, notions of identity, lifestyles and crises of their societies and cultures.”<sup>31</sup> Second, films may judge or invite judgment.<sup>32</sup> Cinematic judgments include ways in which films “actively perform[] judgment and engag[e] viewers in cinematic judging acts.”<sup>33</sup> Finally, films may “elicit popular jurisprudence” into many different issues, including “women’s roles as mothers.”<sup>34</sup>

Before analyzing the films’ cinematic parallels, judgment, and jurisprudence, a brief summary of each follows. *Stephanie Daley*, an independent film written and directed by Hilary Brougher, premiered at the 2006 Sundance Film Festival and won Best Screenplay.<sup>35</sup> In it, Stephanie (Amber Tamblyn) a sixteen-year-old white, middle class student, becomes pregnant after she is seduced at a party by Corey (Kel O’Neill), a recent high school graduate that Stephanie has just met.<sup>36</sup> Stephanie denies her pregnancy and delivers the baby, estimated to be twenty-six gestational weeks, while she is on a high school ski trip. When the baby is found dead in the ski lodge bathroom, Stephanie is charged with murder and Corey with statutory rape.

The majority of the film shows forensic interviews conducted by state appointed psychologist Lydie Crane (Tilda Swinton), and flashbacks to

<sup>28</sup> *Stephanie Daley Q&A with Hilary Brougher*, STEPHANIE DALEY’S BLOG, <http://www.myspace.com/stephaniedaley/blog/237647902> (last visited Oct. 27, 2011) [hereinafter *Brougher Q&A*].

<sup>29</sup> Kamir, *supra* note 20, at 261–62.

<sup>30</sup> *Id.* at 261.

<sup>31</sup> *Id.* at 264.

<sup>32</sup> *Id.* at 270.

<sup>33</sup> *Id.* at 269.

<sup>34</sup> *Id.* at 263.

<sup>35</sup> *Faculty Biography of Hilary Brougher*, COLUMBIA UNIVERSITY SCHOOL OF THE ARTS, <http://arts.columbia.edu/film/hilary-brougher> (last visited Oct. 20, 2011).

<sup>36</sup> STEPHANIE DALEY: Special Feature Audio Commentary (Redbone Films/ Silverwood Films Production 2006) [hereinafter Special Feature Audio Commentary] (featuring commentary by director Hilary Brougher, star Amber Tamblyn, and cinematographer David Morrison referring to the sex scene as a “seduction scene” despite the fact that the character Corey is later found guilty of statutory rape).

events in Stephanie's life and parallel events in Lydie's life.<sup>37</sup> Initially, Stephanie denies that she was pregnant or that she killed the baby. She does not remember the birth. However, through interviews, Stephanie slowly recalls clues that she was pregnant. During the last interview, she suffers from amnesia, but tells Lydie that she knew the baby would be dead, so she wrapped her in toilet paper and threw her away. After this confession, Stephanie agrees to accept a guilty plea for criminally negligent homicide. In the final scene, Stephanie experiences reintegration from her amnesia and finally describes the birth of a weakly breathing baby.

Whereas *Stephanie Daley* portrays a teen who denies her unwanted pregnancy, *Just Another Girl on the I.R.T.* portrays a teen who acknowledges and conceals her unwanted pregnancy. Written and directed by Leslie Harris, *Just Another Girl on the I.R.T.* is an independent film that won Special Jury Recognition for a dramatic first feature at the 1993 Sundance Festival.<sup>38</sup> It has been compared to the cinema of Spike Lee, with its rap music, "frenetic, high energy, [and its] thoroughly contemporary look at urban Black [culture]."<sup>39</sup> While Lee's films "present stories from male perspectives with male subjects," Harris's film presents a black feminist perspective.<sup>40</sup>

In *Just Another Girl on the I.R.T.*,<sup>41</sup> Chantel Mitchel (Ariyan Johnson), a seventeen-year-old African-American student, plans to get out of the projects and become a doctor. After taking two positive pregnancy tests in the presence of her best friend, Natete (Ebony Jerido), Chantel goes to a clinic, where a social worker tells her that she cannot give information about abortion because the clinic is federally funded. Chantel insists she does not want to place the baby for adoption, but wants an abortion. She later tells her boyfriend Tyrone (Kevin Thigpen), "It's my body and my decision." However, after Tyrone gives her \$500 to terminate her pregnancy, she impulsively goes on a shopping spree with Natete after

<sup>37</sup> STEPHANIE DALEY (Redbone Films/ Silverwood Films Production 2006). When the character Lydie first interviews the character Stephanie, Lydie is about thirty weeks' pregnant and had suffered a miscarriage the previous year. *Id.*

<sup>38</sup> *Sundance Film Festival Awards for 1993*, IMDB.COM, <http://www.imdb.com/event/ev0000631/1993> (last visited Oct. 25, 2011).

<sup>39</sup> Linda Lopez McAlister, *A Film Review*, *Just Another Girl on the I.R.T.*, <http://mith.umd.edu/WomensStudies/FilmReviews/girl-on-irt-mcalister>.

<sup>40</sup> Marjorie Baumgarten, Film Listing, *Just Another Girl on the I.R.T.*, THE AUSTIN CHRONICLE, Apr. 16, 1993, available at <http://www.austinchronicle.com/gyrobase/Calendar/Film?Film=oid%3A139449>.

<sup>41</sup> McAlister, *supra* note 39 (indicating that I.R.T. stands for "Interborough Rapid Transit," part of the subway system in New York City, where the film takes place).

claiming that she had started her period. Chantel continues to conceal her pregnancy, and when she goes into labor at Tyrone's house, he helps deliver the baby. At Chantel's insistence, he takes the newborn outside and puts her in the trash. However, when a young boy hears baby cries and calls for help, the police find nothing because Tyrone has had second thoughts and has retrieved the baby. The final scene depicts Chantel greeting Tyrone and the baby after a college class, a closure suggesting she will fulfill her dream of becoming a doctor.

Together, *Stephanie Daley* and *Just Another Girl on the I.R.T.* illustrate different outcomes and responses to unwanted pregnancy—denial and concealment—thus challenging cultural representations and forcing the viewer to sit in judgment of Stephanie and Chantel. In exploring these issues, the first part of this essay considers cinematic parallels to unwanted teen pregnancy through the depiction of two different but confusingly similar responses: denial and concealment. The films and corresponding legal cases compel the viewer to acknowledge a spectrum of responses to unwanted pregnancy. The second part of this essay turns to cinematic parallels and judgments about denial or complicity by the girls' families and others. One obvious question is why a girl's family or friends fail to notice she is pregnant and intervene before the birth. Part Two discusses the problem of collusion and makes recommendations for a solution to this problem. Part Three of this essay describes the films' cinematic jurisprudence by considering Stephanie's punishment and the likely punishment Chantel would have received had the abandonment succeeded. Part Three also considers different models of punishment to explore the broader question of appropriate punishments in neonaticide cases.

#### I. CINEMATIC PARALLELS: CHANTEL'S CONCEALMENT VERSUS STEPHANIE'S DENIAL

*"You don't think I was stupid enough to get pregnant?"*<sup>42</sup>

*Stephanie Daley* and *Just Another Girl on the I.R.T.* contain cinematic parallels to concealment and denial in unwanted teen pregnancy. Although these two responses differ, many who describe unwanted pregnancy use the terms "concealment" and "denial" interchangeably. However, others more precisely distinguish concealment from denial, and further distinguish three

<sup>42</sup> JUST ANOTHER GIRL ON THE I.R.T., *supra* note 1.

types of denial — affective denial, pervasive denial, and psychotic denial.<sup>43</sup> Understanding the distinction between concealment and denial impacts social understanding and efforts to prevent tragic outcomes of unwanted pregnancy.

The three types of denial are psychological defense mechanisms “used to resolve emotional conflict and to allay anxiety by disavowing thoughts, feelings, wishes, needs or external reality factors that are consciously intolerable.”<sup>44</sup> The first type, affective denial, “occurs when a woman acknowledges intellectually that she is pregnant but experiences very few or none of the accompanying emotional and behavioral changes. There is a blunting, rather than a heightening, of sensitivity.”<sup>45</sup> Women “do not display emotions associated with pregnancy,”<sup>46</sup> but “continue to think, feel, and behave as though they were not pregnant.”<sup>47</sup> Unlike women who experience pervasive denial, they have “some form of awareness” and conceal the pregnancy from others.<sup>48</sup>

The second type, pervasive denial, occurs when a woman realizes she has missed periods and might be pregnant, but unconsciously denies and conceals the pregnancy.<sup>49</sup> Researchers claim the denial occurs at all levels, “psychological, social, and physiological.”<sup>50</sup> In pervasive denial, “physical manifestations of pregnancy are either absent or misinterpreted,” and women have fewer symptoms of pregnancy than normal, do not gain as much weight so that their normal clothes may continue to fit, or may continue to menstruate.<sup>51</sup> Researchers note that even “[w]omen with no mental health problems can be prone to unconscious pregnancy denial under extreme stress.”<sup>52</sup> Additionally, a woman may shift between affective denial and pervasive denial so that “sometimes there is intermittent acknowledgement of pregnancy but . . . it is quickly denied

<sup>43</sup> See CATHERINE CONLON, CONCEALED PREGNANCY: A CASE-STUDY APPROACH FROM AN IRISH SETTING, CRISIS PREGNANCY AGENCY REPORT NO. 15, at 36 (2006); see also Laura J. Miller, *Denial of Pregnancy*, in INFANTICIDE: PSYCHOSOCIAL AND LEGAL PERSPECTIVES ON MOTHERS WHO KILL 81, 81, 83 (Margaret G. Spinelli, ed., 2003).

<sup>44</sup> Everett Dulit, *Girls Who Deny A Pregnancy: Girls Who Kill the Neonate*, 25 ADOLESCENT PSYCHIATRY 219, 223 (2000) (quoting the APA definition).

<sup>45</sup> Miller, *supra* note 43, at 83.

<sup>46</sup> CONLON, *supra* note 43, at 38.

<sup>47</sup> Miller, *supra* note 43, at 83.

<sup>48</sup> CONLON, *supra* note 43, at 37.

<sup>49</sup> *Id.* at 38.

<sup>50</sup> *Id.* at 40.

<sup>51</sup> Miller, *supra* note 43, at 84.

<sup>52</sup> CONLON, *supra* note 43, at 37.



again.”<sup>53</sup> Pervasive denial is also called “true denial” or “total denial” by some researchers.<sup>54</sup>

The third type of denial, psychotic denial is more serious and less common than affective or pervasive denial. In psychotic denial, women are delusional and misinterpret signs of pregnancy in a “bizarre fashion”: “One woman believed, for example, on sensing fetal movements, that her liver and kidneys had become unmoored in her body and were rattling around loose.”<sup>55</sup> Psychotic denial is rare in women who commit neonaticide; moreover, researchers estimate that few women who commit neonaticide suffer severe mental illness.<sup>56</sup>

In contrast to pregnancy denial, concealment of pregnancy is not a psychological defense mechanism, but a conscious response that “occurs in women who know they are pregnant and actively conceal pregnancy from family, partners, friends, teachers, and coworkers.”<sup>57</sup> In other words, pregnancy concealment is an action taken by the woman who knows she is pregnant, but does not want others to know. It differs from affective denial because the woman acknowledges her pregnancy.<sup>58</sup> This difference can be slight and it is sometimes difficult to distinguish concealment from affective denial. Concealment generally results from “social factors, such as stigma of lone motherhood or religious beliefs regarding abortion” or pre-marital sex, the same stressors that might trigger denial.<sup>59</sup>

In addition to concealing or denying their pregnancies, women who commit neonaticide may also experience dissociation during childbirth. This out-of-body experience of dissociation is defined as “a disruption in the usually integrated functions of consciousness, memory, identity and perception of the environment” and can be viewed as “a trance state, a hypnotic state, a fugue state in which a person can perform fairly complex acts . . . without quite knowing what he or she is doing.”<sup>60</sup> Dr. Miller describes “[o]ne woman, for example [who], heard her baby cry and thought someone else had delivered.”<sup>61</sup>

<sup>53</sup> *Id.* at 38.

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

<sup>55</sup> Miller, *supra* note 43, at 85.

<sup>56</sup> OBERMAN & MEYER, *supra* note 5, at 43; Miller, *supra* note 43, at 83.

<sup>57</sup> Susan Hatters Friedman, Amy Heneghan & Miriam Rosenthal, *Characteristics of Women Who Deny or Conceal Pregnancy*, 48 *PSYCHOSOMATICS* 117, 117 (2007).

<sup>58</sup> CONLON, *supra* note 43, at 38. Affective denial differs because the woman consciously denies her pregnancy, “implying some form of awareness.” *Id.* at 37.

<sup>59</sup> *Id.* at 38–39.

<sup>60</sup> Dulit, *supra* note 44, at 223.

<sup>61</sup> Miller, *supra* note 43, at 85.

The distinction between “denial” and “concealment” is commonly blurred in media accounts, and often in scientific literature,<sup>62</sup> which use the terms interchangeably. This increases confusion about unwanted pregnancy and about the mother’s culpability for murder or manslaughter. For instance, psychologist Lara Riley conducted a survey of imprisoned women and concluded that a mother who abandons or kills a newborn is not morally culpable of murder because “[t]he consistency of the behavioral and psychological responses . . . support an assessment of neonaticide . . . as *an impulsive response* consistent with the mental status of a woman who has expended energy for several months *concealing her pregnancy* from the world, rather than a premeditated act of rage or aggression toward a newborn.”<sup>63</sup> Riley’s conclusion that the woman’s actions constitute “an impulsive response” more accurately supports an assessment of “denial,” not “concealment,” because if the woman has expended energy concealing her pregnancy, it is likely that she has thought about the birth. While this distinction may not be critical for psychological evaluations such as Riley’s, it is critical in the context of criminal culpability. Yet, even in forensic settings, experts reach different conclusions about whether a woman has experienced unconscious denial or has consciously concealed her pregnancy.

For instance, in the French trial of Véronique Courjault, the mother who put newborns in her freezer, Dr. Michel Delcroix testified that Courjault denied her pregnancies, a condition he described as “a quasi-schizophrenic condition in which women either don’t realize or cannot accept that they are with child . . . . Whether these women are afflicted with the condition before they deliver or as they’re suddenly giving birth . . . the psychological denial is so strong that they refuse to believe they’re pregnant even when the reality confronts them.”<sup>64</sup> In contrast to Dr. Delacroix’s testimony, a French study concluded that in the twenty-seven court cases analyzed, 90-100% of the pregnancies were concealed, but there was “no true denial of pregnancy.”<sup>65</sup> While experts cannot always agree on the definition or parameters of pregnancy denial, neither Courjault nor other women claiming denial in France or the United States have been

<sup>62</sup> CONLON, *supra* note 43, at 15, 36.

<sup>63</sup> Lara Riley, *Neonaticide: A Grounded Theory Study*, 12 J. HUM. BEHAV. IN THE SOC. ENV. 1, 34–35 (2005) (emphasis added).

<sup>64</sup> Crumley, *supra* note 2.

<sup>65</sup> Anne Tursz & Jon M. Cook, *A Population-Based Survey of Neonaticides Using Judicial Data*, ARCH. DIS. CHILD FETAL NEONATAL ED. (2010), F1, F4.

acquitted on that basis. Generally, in the United States, judges exclude evidence of a neonaticide syndrome because it is not a legally recognized defense.<sup>66</sup> For instance, in McCoy's trial, the judge refused to allow expert testimony that McCoy was suffering from post-traumatic stress disorder to explain why she hid the newborn.<sup>67</sup> The films depict the distinction between concealment and denial, and by doing so, challenge social and legal norms and constructions.

Although the two films do not use the terms "denial" or "concealment," they demonstrate the difference between these two conditions. Stephanie's response to unwanted pregnancy is shown in a flashback as she is being interviewed by Lydie. Stephanie, who is inexperienced with boys, much less with sex, becomes pregnant as a result of Corey's seduction the summer before her sophomore year in high school. In the initial interview with Lydie, after Stephanie has been charged with murder, Stephanie's demeanor is stiff and aloof. Reviewers describe Tamblyn's portrayal of a "depleted and numb" teen<sup>68</sup> as a "breakthrough performance that is especially impressive because it shows much while seeming to do very little . . . she is more reserved than ever [after the baby's death], as haunted and withdrawn as a ghost walker."<sup>69</sup>

She adamantly tells Lydie, "I didn't kill it." Although Stephanie suffers from amnesia about the birth, she remembers events from the previous summer when she was seduced. As she tells Lydie about going to church, practicing flute, and attending the party, the events are shown as flashbacks.<sup>70</sup> Stephanie's demeanor changes from quiet defiance to despair when she tells Lydie about Corey's seduction.

After Lydie probes Stephanie's denial of the seduction in the first interview, in the second interview she questions Stephanie's failure to acknowledge her pregnancy. Again, the events are shown as flashbacks.

<sup>66</sup> Michael L. Perlin, "She Breaks Just Like a Little Girl": Neonaticide, the Insanity Defense, and the Irrelevance of "Ordinary Common Sense," 10 WM. & MARY J. OF WOMEN & L. 1, 23-24 (2003).

<sup>67</sup> DVD: *State v. McCoy*, Trial Recording, County Clerk's Office, 2009 (on file with author).

<sup>68</sup> Janice Page, *A Brave Tale of Motherhood and Marriage*, THE BOSTON GLOBE, May 11, 2007, at D11, available at [http://articles.boston.com/2007-05-11/ae/29231382\\_1\\_lydie-stephanie-daley-stephanie-claims](http://articles.boston.com/2007-05-11/ae/29231382_1_lydie-stephanie-daley-stephanie-claims).

<sup>69</sup> Kenneth Turan, Movies; Review; *A Study of Marriage and Motherhood*, LOS ANGELES TIMES, April 27, 2007, at E4.

<sup>70</sup> Alain Cohen, *Woody Allen and Freud*, in CELLULOID COUCHES, CINEMATIC CLIENTS: PSYCHOANALYSIS AND PSYCHOTHERAPY IN THE MOVIES 133 (Jerold R. Brandell ed., 2004) (commenting about flashbacks that they "are situated at the intersection of film art and technique and psychoanalytic insight: flashbacks in myriad styles depend, of course, upon the art of editing and mise-en-scene; however, in so doing, flashbacks relate as if in cause-and-effect the transference of the there-and-then into the here-and now").

For instance, after band practice, when the girls are changing out of their uniforms, one girl comments that Stephanie's breasts are larger, exclaiming, "Look at your boobs!" Stephanie does not respond, but turns away. When Lydie probes this and asks what Stephanie thought when her period was late, Stephanie evasively answers that she did not think she was pregnant because she was always dieting, had irregular periods, and Corey told her "it didn't count because he didn't come."

Stephanie's denial of her pregnancy was likely pervasive denial rather than affective denial. Although she might have had occasional awareness that her body was changing, she could not accept the possibility that she might be pregnant, so the defense mechanism of denial prevented conscious awareness of pregnancy. Some researchers describe passivity, which might include "the sexual relationship that led to the pregnancy," as a risk factor for denial.<sup>71</sup> Stephanie exhibited this risk factor because she identified herself as a "good girl." When Corey seduced her, she suffered cognitive dissonance and unconsciously denied signs of her pregnancy.<sup>72</sup>

In contrast to Stephanie, Chantel is older (a senior in high school), and more experienced with boys and sex. About Chantel's performance, Hal Hinson writes, "Ariyan Johnson seizes the camera's attention like no other performer since John Travolta strutted in to *Saturday Night Fever*. Like Travolta's sidewalk prince, Johnson's Chantel is Brooklyn royalty. She's the smartest girl in her school, the best dancer, the best hooked-up and the freshest dresser."<sup>73</sup> Unlike Stephanie, who shuts down emotionally, Chantel considers herself in charge of her destiny and behavior, including a consensual sexual relationship with her boyfriend, even though she admits her parents would kill her if they found out. After Chantel becomes pregnant, she acknowledges her plight by taking two pregnancy tests in the presence of her friend Natete, going to a clinic, and later confiding to Tyrone that she is pregnant. She plans to have an abortion with money Tyrone gives her, but when Natete confronts her about her strange behavior, Chantel spends the money on a shopping spree with Natete in an effort to make up.

Unlike Stephanie, Chantel does not experience pervasive denial, but perhaps affective denial, or more likely, concealment. Chantel's response to unwanted pregnancy could be viewed as affective denial, in which she

<sup>71</sup> Miller, *supra* note 43, at 91.

<sup>72</sup> Miller, *supra* note 43, at 88.

<sup>73</sup> Hal Hinson, 'I.R.T.': *Express Line to the Inner City*, THE WASHINGTON POST, April 2, 1993, at D1.

has some conscious awareness of her pregnancy, but does not display normal emotions of pregnancy and continues to act as if she were not pregnant. For example, she tells the viewer in an aside that she went ahead with her college plans and didn't think of being pregnant. Most of the scenes, however, point to concealment, rather than affective denial because Chantel is aware of her pregnancy and actively hiding it from others. In another aside, she explains how she fakes late night binges and buys feminine hygiene products, two sets of clothes (large and small), and a girdle in order to hide her pregnancy from her mother. When she lies to Natete that her period has started, she says, "You don't think I was stupid enough to get pregnant?"<sup>74</sup>

How does a teen like Chantel, who is consciously aware of, but conceals her pregnancy, feel about the baby? Does she just not think about it or does she consider it a foreign object, "a disease, a burden she wished to get rid of, a parasite she wanted removed from her organism" like many women who experience unwanted pregnancy?<sup>75</sup> The viewer cannot be certain, but when Chantel and Tyrone deliver the baby, Chantel refuses to look at the crying baby. Instead, she says, "Take it away. I don't want to see it."

A comparison of these two films provides cinematic parallels to unwanted pregnancy and makes the critical point that there is not one psychological response to unwanted pregnancy. A teen may unconsciously deny her pregnancy even to herself or she may consciously act to conceal it from others. This is an important point in a country such as the United States, which treats neonaticide as murder and which does not distinguish pervasive denial, affective denial, and concealment. Without understanding these distinctions, how is society to understand, judge, and prevent abandonment and neonaticide? Part Three of this essay furthers this analysis by discussing how these different responses to unwanted pregnancy influence judgments about blameworthiness and punishment.

## II. CINEMATIC PARALLELS AND JUDGMENT: COMPLICITY OF FAMILY MEMBERS AND OTHERS

*"Neonaticide is not so much about a lack of economic resources as it is*

<sup>74</sup> JUST ANOTHER GIRL ON THE I.R.T., *supra* note 1.

<sup>75</sup> Caroline Lundquist, *Being Torn: Toward a Phenomenology of Unwanted Pregnancy*, 23 HYPATIA 136, 143 (2008).

*about a lack of communication and community.*"<sup>76</sup>

*Stephanie Daley* and *Just Another Girl on the I.R.T.* provide cinematic parallels and invite cinematic judgment about the complicity of family members and others in unwanted pregnancy. Indeed, one puzzle about unwanted teen pregnancy is the failure of others to notice. How could the watchful eyes of family, friends, or teachers fail to observe a teen's pregnancy? One wonders how a parent could fail to see changes in a daughter's body, yet family members often report they did not know the teen was pregnant.<sup>77</sup> Dr. Laura Miller describes cases in which even the woman's sexual partner "may not have noticed pregnancy despite having had sexual intercourse just hours before labor," and also describes cases in which doctors who examined the pregnant young woman for other problems did not notice the pregnancy.<sup>78</sup> In addition to describing the phenomenon of complicity of others, part Two offers recommendations for greater surveillance to prevent tragic outcomes.

In many accounts of neonaticide, families, roommates, and others claim not to have known about the young woman's pregnancy. For instance, in December of 2005, Consuelo Camacho, an eighteen-year-old college student, who was described as a smart and driven young woman, concealed her pregnancy from her mother, then after delivering the baby in the shower of her family's Riverside, California home, impulsively stabbed the baby fifteen times with a pair of scissors.<sup>79</sup> Ultimately it was revealed that her stepfather had been sexually abusing her for years and knew she was pregnant.<sup>80</sup> However, Camacho's mother did not know about her pregnancy, and when asked by her boss if she was pregnant, Camacho had told him that she had a tumor and was going to have surgery soon.<sup>81</sup> Camacho had a slight build, and told other friends and family that a medical problem caused her swollen stomach.<sup>82</sup> What do we make of her mother's claim not to know her daughter was pregnant? Was her mother unconsciously or consciously ignoring signs that her daughter was being

<sup>76</sup> Michelle Oberman, *Mothers Who Kill: Coming to Terms with Modern American Infanticide*, 34 AM. CRIM. L. REV. 1, 73 (1996).

<sup>77</sup> OBERMAN & MEYER, *supra* note 5, at 56.

<sup>78</sup> Miller, *supra* note 43, at 84–85.

<sup>79</sup> Ben Goad, *Young Lives Cut Short; Painful Secrets; the Case of a San Bernardino County Teenager and the Son Who Nearly Died of Stab Wounds Follows a Profile Familiar to Experts*, THE PRESS-ENTERPRISE, May 7, 2006, at S6.

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

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

sexually abused?

Researchers claim that denial of pregnancy extends not just to the pregnant teen, but beyond, to the entire family, which, for its own reasons cannot accept the pregnancy.<sup>83</sup> While it might seem preposterous that a pregnant teen could conceal her pregnancy for the entire term, researchers suggest that the failure of others to notice is due to a lack of intimate relationships or perhaps collusion by the family.<sup>84</sup> Another reason others might not notice is that the “pregnancy can be surprisingly minimally noticeable—fooling everyone,” such as when the teen is obese or very slim and wearing loose clothes.<sup>85</sup> McCoy, the golf star discussed above, concealed her pregnancy with her athletic five foot, eleven inch frame.<sup>86</sup> She even played in a golf tournament the week before she gave birth, yet her coach claimed not to know she was pregnant.<sup>87</sup>

Similarly, cinematic parallels depict family complicity or denial in both *Stephanie Daley* and *Just Another Girl on the I.R.T.* Stephanie’s family fails to notice her pregnancy because they lack intimate relationships and because her pregnancy is not that advanced when she prematurely goes into labor at twenty-six weeks. As a result, when Stephanie is charged with murder, her parents cannot acknowledge her pregnancy, much less her murder charge. Thus, the prosecutor comments to Lydie that Stephanie’s parents “won’t touch the plea bargain because they want to clear their little girl.” Although Lydie does not explore Stephanie’s relationship with her parents in depth, she asks whether her parents talked to her about sex or abortion. Stephanie admits that they did not talk about sex, and then asserts that abortion “would be like killing a baby,” which ironically is not an uncommon response by women who have killed newborns.<sup>88</sup>

The viewer learns that Stephanie’s parents have a strained relationship, especially since her father lost his job and temporarily abandoned the family. Her best friend does not know that Stephanie had sex, much less

<sup>83</sup> Miller, *supra* note 43, at 84–85 (noting that “[t]he phenomenon of collective deception and collusion in denial has been noted in nearly all cases of profound pregnancy denial” and that intimate partners as well as physicians participate in the collusion).

<sup>84</sup> Margaret G. Spinelli, *The Promise of Saved Lives: Recognition, Prevention and Rehabilitation, in* INFANTICIDE: PSYCHOSOCIAL AND LEGAL PERSPECTIVES ON MOTHERS WHO KILL 235, 242 (Margaret G. Spinelli ed., 2003); OBERMAN & MEYER, *supra* note 5, at 56–57.

<sup>85</sup> Dulit, *supra* note 44.

<sup>86</sup> Linda Blackford & Valarie Honeycutt Spears, *With Child: What Drives a Young Woman to Kill her Newborn?*, LEXINGTON HERALD-LEADER, Nov. 18, 2007, at A1.

<sup>87</sup> *Id.*; Nancy Grace: College Student Arrested After Cops Find Dead Newborn in Dorm Room (CNN Oct. 26, 2007) available at, [transcripts.cnn.com/TRANSCRIPTS/0710/26/ng.01.html](http://transcripts.cnn.com/TRANSCRIPTS/0710/26/ng.01.html).

<sup>88</sup> Blackford & Spears, *supra* note 86 (quoting Cheryl Myers on girls accused of neonaticide often being anti-abortion).

that she is pregnant, and while girls in the locker room comment that her breasts are larger, no one asks if she is pregnant. So, in addition to lacking a close confidant, Stephanie also has a slender build, and as Lydie points out to the prosecutor, the “tight” abdominal muscles of a slender teen could prevent others from detecting pregnancy. Moreover, Stephanie goes into labor at the end of her second trimester, before pregnancy typically becomes obvious, so it is not surprising that her family, friends, and teachers would fail to notice.<sup>89</sup> Finally, if Stephanie experiences pervasive denial about her pregnancy, that also explains why she would not confide in her best friend or her parents about Corey’s seduction or the changes in her body.

In contrast to Stephanie, it is more surprising that Chantel’s family and friends fail to detect her pregnancy because she delivers at full term. When Tyrone sees her protruding belly before she goes into labor, he asks how she managed to hide it. She tells him she hid it by wearing a girdle and loose clothing. She lied to her best friend that her period had started, and she faked eating binges so her mother would not suspect her pregnancy. Moreover, like Stephanie, Chantel lacks an intimate relationship with her family, so it is less likely her parents would notice. Like Stephanie’s parents, Chantel’s parents seem too busy with their own lives to observe their daughter’s changing body. Chantel’s mother, Debra (Karen Robson), comes home at midnight after working two jobs, and her father comes home from work at eight in the morning. They leave Chantel in charge of her two younger brothers, and no one in the family comments about her growing stomach.

Perhaps these family dynamics mirror typical adolescence in which teens emotionally separate from their families. Both Stephanie and Chantel seem closer to their father than mother; they are “daddy’s girls,” as one of the soundtracks (“Daddy’s Little Girl”) suggests.<sup>90</sup> For instance, Chantel’s father tells her he does not want her to date a boy from the projects; Stephanie’s father consoles her when she is upset, and ironically tells her he is proud of her for “taking a risk” and to “break a leg” when he gives her permission to attend her class ski trip. As Daddy’s girls, their primary

<sup>89</sup> In contrast, when the interviews begin, Lydie is also at the end of her second trimester of pregnancy, and appears obviously pregnant. Of course, Lydie’s pregnancy is desired, so she is more likely to be obviously pregnant.

<sup>90</sup> Nikki D., *Daddy’s Little Girl* (Sony 1991); see Vincent Canby, Movie Review, *Just Another Girl on the I.R.T.*, NEW YORK TIMES, June 4, 2011, available at [movies.nytimes.com/movie/26810/Just-Another-Girl-on-the-I-R-T-/overview](http://movies.nytimes.com/movie/26810/Just-Another-Girl-on-the-I-R-T-/overview).



bond is not with their mothers. Some feminists, such as theorist and psychoanalyst Luce Irigaray, criticize the cultural norm of weak mother-daughter bonds. Irigaray attributes this failure to patriarchal suppression, especially the cultural expectation that a girl “relinquish her primary attachment to the mother in order eventually to take her father as [a] love object.”<sup>91</sup> Like Irigaray, cultural theorist Andrea O’Reilly has similarly written about the importance of mother-daughter relationships that “unravel the patriarchal script.”<sup>92</sup> According to O’Reilly, “daughters are abandoned by their mothers when they need them the most[:]” during adolescence.<sup>93</sup>

Although a teen might feel more comfortable talking to her mother than her father about sexuality and pregnancy, perhaps a relationship with *any* adult is most important to navigate an unwanted pregnancy. This certainly seems true for *Stephanie* and *Chantel*. Both films portray a lack of communication between the teen and any other adult who might have prevented the tragic outcome of unwilling pregnancy.

In commenting on *Stephanie Daley*, director Brougher stated that “if there’s a message to this movie it’s that it’s important to communicate, that there’s a huge cost and consequence for small things that we leave unsaid . . . .”<sup>94</sup> Consistently with Brougher’s statement, several young women who have concealed pregnancy and committed neonaticide have indicated that they wished *someone* had confronted them with the fact of their pregnancy and offered help.<sup>95</sup> For instance, nineteen-year-old Racquel Phifer, who lived at home with her parents and brother in North Carolina, delivered her baby, and then left the baby in a park dumpster, later said that she “wished my mother could have looked at me and known something was wrong.”<sup>96</sup> Likewise, an English woman convicted of infanticide stated,

<sup>91</sup> ELIZABETH GROSZ, *SEXUAL SUBVERSIONS: THREE FRENCH FEMINISTS* 119 (1989).

<sup>92</sup> Andrea O’Reilly, *Across the Divide: Contemporary Anglo-American Feminist Theory on the Mother-Daughter Relationship*, in *REDEFINING MOTHERHOOD: CHANGING IDENTITIES AND PATTERNS* 69, 70 (Sharon M. Abbey & Andrea O’Reilly eds., 1998).

<sup>93</sup> *Id.* at 79–80.

<sup>94</sup> Ian Spelling, *Interview: Hilary Brougher On Stephanie Daley*, *LATINO REVIEW* (Apr. 20, 2007), <http://www.latinoreview.com/news/interview-hilary-brougher-on-stephanie-daley-1850> (last visited July 19, 2010).

<sup>95</sup> See Thea Jourdan, *The Ultimate Taboo*, *THE SCOTSMAN*, July 27, 1998, at 9 (describing a young Englishwoman, convicted of infanticide and charged with three years’ probation, saying she wished someone had approached and comforted her while she was pregnant); see also Riley, *supra* note 63, at 28 (noting that participants in a study said they wished their families had discovered their pregnancies, which would have made them feel less isolated).

<sup>96</sup> Nancy H. McLaughlin, *Years Later, Phifer Talks of Regrets, Forgiveness: The Mother of a Baby Left in a Trash Bin Wants Greensboro to Know She’s Sorry*, *GREENSBORO NEWS AND RECORD*, Feb. 22, 2004, at A1 (stating that Phifer easily concealed her pregnancy because her weight had fluctuated by 100 pounds in the year before the pregnancy).

“I wish someone had come up to me and said quietly, ‘Look, you’re pregnant, but there’s nothing to worry about. You’re going to be OK.’”<sup>97</sup>

Even though the concept of surveillance conflicts with feminist views of privacy concerning reproductive decisions,<sup>98</sup> many suggest that parents, teachers, school counselors, and doctors *should* exhibit greater surveillance over a young woman’s body in order to prevent neonaticide. For instance, the last witness to testify for the defense in the McCoy case was the mother of another golfer on McCoy’s team. The mother claimed that McCoy’s teammates knew she was pregnant, but did not do anything.<sup>99</sup> The mother said, “We failed . . . We failed as a community. I failed as a parent. I failed as an adult. And, in my opinion, everyone that came in contact with Katie failed.”<sup>100</sup> Similarly, in commenting about the McCoy case, Dr. Geoffrey McKee, a clinical psychologist, observed that “[i]f just one other person knows of the pregnancy and acts for the prospective mothers, neonaticide drops like a stone.”<sup>101</sup> Although people tend to respect their friends’ privacy, McKee declared that if one suspects a friend of concealing or denying a pregnancy “[i]t’s better to act and be wrong or embarrassed or even lose a friend than to be silent and have a tragedy like this happen.”<sup>102</sup>

In addition to preventing complicity of pregnancy concealment by the teen’s family and friends, Dr. Spinelli urges prevention by professionals who come in contact with her. Spinelli claims that “health providers, teachers, and parents [should be educated] to identify early signs” such as “denial of pregnancy . . . , dissociative symptoms, dissociative hallucinations, depression, and suspicion of early trauma in isolated, rigid family structures.”<sup>103</sup> Likewise, Dr. Christine Moll, a counseling educator, suggests that counselors should provide workshops “for the school community; teachers, health professionals, and parents.”<sup>104</sup> Moll observes that in middle schools, high schools, and colleges, professional counselors

<sup>97</sup> Jourdan, *supra* note 95.

<sup>98</sup> See Carol Sanger, *Infant Safe Haven Laws: Legislating in the Culture of Life*, 106 COLUM. L. REV. 753, 814 (2006) (“Community policing of women who might be pregnant—and therefore might do away with the child before or just after its birth—echoes practices of nineteenth-century Italy where the surveillance of women for signs of pregnancy by priests, midwives, and family was common.”).

<sup>99</sup> Jackey, *supra* note 10.

<sup>100</sup> *Id.*

<sup>101</sup> Blackford & Spears, *supra* note 86.

<sup>102</sup> *Id.*

<sup>103</sup> Spinelli, *supra* note 84, at 242–43 (pointing out that in cases of neonaticide, “[t]eachers report having recognized a difference in the young woman’s mood and a drop in grades. Family physicians may have actually diagnosed pregnancy but failed to follow up”).

<sup>104</sup> E. Christine Moll, *In Defense of TJ’s Mother: Neonaticide and the Implications for Counselors*, 41 J. HUMANISTIC COUNSELING, ED. & DEV. 150, 156 (2002).

“may have a more significant relationship with young women than do health educators” and may have a greater “potential of assisting young pregnant women.”<sup>105</sup> Counselors who provide young pregnant women with options and support might successfully enable these young women “to recognize reality and seek appropriate medical assistance.”<sup>106</sup>

While McKee, Spinelli, and Moll provide valuable recommendations for parents and others, even the best efforts may be thwarted. For instance, in July 2005, Cheyenne Corbett, a seventeen-year-old high school senior in Colorado, delivered her baby in a shower and then abandoned the baby in an entertainment center where it suffocated.<sup>107</sup> Both her friends and her parents knew she was pregnant and tried to help in the early stages of her pregnancy, but she insisted she was not pregnant.<sup>108</sup> Her friends initially took Corbett and the baby’s father to a clinic for a pregnancy test; but when it was positive, the baby’s father abandoned her.<sup>109</sup> Later, Corbett’s parents, who had been supportive when her older unmarried sister had a baby, took Corbett to a doctor. However, because of privacy laws, the doctor would not release medical information to her parents.<sup>110</sup> Corbett continued to insist she had not been pregnant even after she delivered the baby, and later to hospital attendants when she delivered the placenta.<sup>111</sup> Despite their best efforts, her parents were unable to prevent the tragedy.

In another case, Amy Ellwood, a New York teen, concealed her pregnancy. Her parents also tried to take her to a doctor, but she ignored them.<sup>112</sup> Unfortunately, her parents, who were educators, decided not to interfere because they were afraid she would run away with her boyfriend.<sup>113</sup> In sentencing Ellwood, the judge also passed judgment on her parents “for failing to intervene when they knew she was pregnant.”<sup>114</sup> Similar to the Ellwood and Corbett cases, Spinelli reports that in another case, a young woman’s employer noticed she was pregnant and took her to the doctor for prenatal check-ups. However, the young woman denied the

<sup>105</sup> *Id.* at 155.

<sup>106</sup> *Id.*

<sup>107</sup> Nancy Lofholm, *Privacy Laws Hid Daughter’s Pregnancy*, DENVER POST, July 28, 2006, at B01, available at [http://www.denverpost.com/news/ci\\_4104988](http://www.denverpost.com/news/ci_4104988).

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> PATRICIA PEARSON, *WHEN SHE WAS BAD: VIOLENT WOMEN AND THE MYTH OF INNOCENCE* 68 (1997).

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 90.

pregnancy and committed neonaticide, despite the employer's attempt to help her.<sup>115</sup>

It is difficult, if not impossible, to say what actions parents should take when a teen recalcitrantly conceals pregnancy or unconsciously denies it. Spinelli suggests that the next step in such a situation is that the young woman's doctor should have referred her to a psychiatrist because if denial of her pregnancy had been recognized earlier as a potential danger, a timely psychiatric referral may have saved her baby's life.<sup>116</sup>

As *Stephanie Daley* and *Just Another Girl on the I.R.T.* indicate, cinematic judgment about unwanted teen pregnancy and neonaticide extends not only to the young woman who conceals or denies her pregnancy, but also to her family and others who may collude. Despite privacy concerns, it is important for others to intervene when a young woman conceals or denies her pregnancy. As Brougher accurately notes, the solution is more communication, "speaking and acting," in the face of hidden pregnancy.<sup>117</sup> Sometimes, communicating and offering support may be enough, but in other instances, psychiatric intervention may be required. According to Cheryl Meyer, "[in] every single case, with almost no exceptions, people say, 'I knew something was wrong but I didn't do anything.'"<sup>118</sup>

### III. CINEMATIC JUDGMENT AND JURISPRUDENCE: PUNISHING CHANTEL AND STEPHANIE

*"It's harder to live a lie than tell the truth and be punished."*<sup>119</sup>

One of the most difficult issues surrounding unwanted pregnancy, especially when a teen faces criminal charges for abandoning or killing a newborn, is her mental state or *mens rea*. Does the mother deserve greater punishment because she intentionally concealed her pregnancy from others? Should the mother receive a lesser punishment or be excused because she was in denial about her pregnancy? *Stephanie Daley* and *Just Another Girl on the I.R.T.* raise such questions of cinematic judgment and jurisprudence about punishment.

<sup>115</sup> Spinelli, *supra* note 84.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> Blackford and Spears, *supra* note 86.

<sup>119</sup> DALEY, *supra* note 23.

Generally, society makes quick judgments condemning women who have killed their newborns.<sup>120</sup> As expressed in a letter to the editor when Racquel Phifer placed her newborn in a Greensboro dumpster, “[i]t is not only unfair, but it is despicable that a mother would make the choice to kill her baby and throw her in the garbage.”<sup>121</sup> Like novels, films slow down this rush to condemn mothers by providing a more complete story about the mother’s circumstances and mental state. Nonetheless, these judgments concerning unwanted pregnancy and neonaticide are not easy. Philosopher Caroline Lundquist observes that “[i]t is difficult for most of us to know how to characterize these women [who experience unwanted pregnancy], whether as monsters or victims themselves.”<sup>122</sup> The difficulty of characterization and judgment is echoed in a review of *Stephanie Daley*: “Throughout the film you’re not quite sure whether [Stephanie’s] evil or innocent and Tambyln never tips her hand.”<sup>123</sup>

Both *Stephanie Daley* and *Just Another Girl on the I.R.T.* elicit the viewer’s judgment about the mother’s culpability. Stephanie has been charged with murder, which is a common charge after a dead newborn has been discovered. In the opening scene following the credits, the prosecutor curtly summarizes the facts for Lydie: Stephanie claimed she did not know she was pregnant, the baby had air in its lungs, the umbilical cord had been cut by teeth, and the baby had toilet paper in its face. In sum, the prosecutor has laid out facts for the viewer to conclude that Stephanie is a monster who has intentionally or knowingly killed her baby by actively smothering it or passively allowing it to die. Her act is repugnant, even to Lydie, who is a trained psychologist.

The remainder of the film challenges this judgment, and develops empathy for Stephanie through Lydie’s interviews, so that by the end, the viewer may reject the view that Stephanie is a monster, and question whether her sentence for criminally negligent homicide is too harsh. As discussed above, Lydie helps Stephanie overcome her denial of the seduction and her amnesia about the childbirth. Lydie’s interviews provide the viewer evidence to pass judgment on Stephanie. They reveal that Stephanie experienced pervasive denial of her pregnancy. Thus, if she was

<sup>120</sup> Susan Ayres, *Who Is to Shame? Narratives of Neonaticide*, 14 WM. & MARY J. WOMEN & L. 55, 61–62 (2007).

<sup>121</sup> Karen F. Beane, Editorial, *Baby’s Funeral Was a Kind, Decent Act*, GREENSBORO NEWS & REC., Feb. 20, 1997, at A10.

<sup>122</sup> Lundquist, *supra* note 75, at 145

<sup>123</sup> Craig Kennedy, Review, *Stephanie Daley*, May 4, 2007, <http://livingincinema.com/2007/05/04/review-stephanie-daley-2007/>.

not consciously aware of her pregnancy, she probably lacked the *mens rea* for premeditated murder. Moreover, her *mens rea* at the time she gave birth is difficult to judge because the childbirth scene depicts Stephanie's dissociation.

Filmed through close-up hand-held shots, both through the crack in the door and inside the stall, the scene portrays Stephanie's shock when she goes into labor. The loud on-screen music becomes muted, and the scene takes place in silence as Stephanie voicelessly screams and grimaces.<sup>124</sup> The viewer does not see the baby delivered or after delivery, but sees blood on Stephanie's hands and face. Her eyes contain a dazed expression, the look of someone not fully present.<sup>125</sup> The silence of the scene presents the experience from Stephanie's point of view—psychologically, she has dissociated.<sup>126</sup> In a forensic study by Lara Riley, all nine of the women she interviewed suffered dissociation at childbirth: some “described an experience of watching herself during the delivery process.” Moreover, almost all had amnesia related to the delivery.<sup>127</sup>

It is not until the interviews between Lydie and Stephanie have concluded that Stephanie experiences reintegration and recalls what happened after she delivered the baby. She tells Lydie that the baby was not crying or breathing correctly. She says, “I didn't want her to live. I told her to die, and she did. I killed her with my mind.” While Stephanie's confession does not support a conviction for intentional murder, Lydie thinks Stephanie has done the right thing in accepting a plea bargain for criminally negligent homicide. Perhaps the viewer might agree that Stephanie was criminally negligent by not calling for assistance or by leaving the baby in the bathroom trash. Alternatively, the viewer might disagree and deem Stephanie not guilty because she has dissociated, an out-of-body experience that makes her actions involuntary or unconscious—a

<sup>124</sup> Viewers know from the film's opening sequence that Stephanie leaves the bathroom trailing bloody steps in the snow, a vision of the abject. She collapses and is carried into an ambulance, while her classmates surround her in stunned silence. Another male voice, presumably a medic, frantically asks, “Where's the baby?”

<sup>125</sup> Laura Gowing, *Secret Births and Infanticide in Seventeenth-Century England*, 156 PAST AND PRESENT 87, 99–101 (1997) (detailing accounts of women who give birth quickly and easily after an unwanted pregnancy); see also OBERMAN & MEYER, *supra* note 5, at 40.

<sup>126</sup> See Special Feature Audio Commentary, *supra* note 36 (featuring director's commentary that film is edited to depict Stephanie's dissociation).

<sup>127</sup> See Riley, *supra* note 63 (defining “dissociation” as “a defensive disruption in the normally occurring connections among feelings, thoughts, behavior, and memories, consciously or unconsciously invoked in order to reduce psychological distress.”); see also Spinelli, *supra* note 2, at 109 (determining that fourteen out of seventeen women she interviewed “experienced dissociative hallucinations” when they gave birth).

defense that excuses her actions.<sup>128</sup> The childbirth scene and therapeutic interviews provide evidence that is unavailable in actual cases, especially when women accept plea bargains to avoid trial, or even at trial, because these defendants rarely testify. Moreover, expert testimony may be unavailable or excluded unless the defendant asserts an insanity defense.<sup>129</sup> The evidence in *Stephanie Daley* demonstrates the difficulty of judging a teen's culpability when the newborn is found dead.

In contrast, the evidence in *Just Another Girl on the I.R.T.* demonstrates more clear-cut culpability. Chantel, who conceals her pregnancy, commands Tyrone to "take it away," despite his warning that "we could get arrested." After a child playing in the street hears cries coming from the garbage bag, authorities arrive to investigate, but find nothing. The mystery is explained back at Tyrone's apartment, when the viewer learns he had a change of heart. He holds the baby and tells Chantel, "I couldn't do it."

*Just Another Girl on the I.R.T.* sidesteps tragedy with a contrived ending. Had the abandonment been successful, the viewer would likely judge both Tyrone and Chantel as having the requisite *mens rea* for intentional murder. A similar situation arose in 1996 when college students Amy Grossberg and Brian Peterson concealed her pregnancy. After she delivered the baby in a motel room, she yelled at him, "[g]et rid of it!"<sup>130</sup> Both were charged with murder, and the community expressed little sympathy. As one woman stated, "[a]s far as I'm concerned they're murderers."<sup>131</sup> Eventually both Grossberg and Peterson accepted plea bargains for involuntary manslaughter.<sup>132</sup> More than ten years later, in 2011, another young couple in Pennsylvania decided they could not afford another child, so when the baby was born, the father took it away and

<sup>128</sup> Judith Macfarlane, *Criminal Defense in Cases of Infanticide and Neonaticide*, in *INFANTICIDE* 133, 143 (Margaret Spinelli ed. 2003) (citing one case in which the court accepted evidence of dissociation during childbirth as establishing proof of an involuntary act).

<sup>129</sup> DVD: *State v. McCoy*, supra note 67 (explaining that the trial court in the McCoy case excluded expert testimony of a post-traumatic stress disorder).

<sup>130</sup> Laura Italiano, *Yes, I Killed My Baby: Weeping Amy Accepts Blame in Plea Deal*, *NEW YORK POST*, April 23, 1998, at A7 (noting that both Grossberg and Peterson claimed to believe the baby was stillborn).

<sup>131</sup> Jim Nolan, April Adamson & Theresa Conroy, *Judgment Day Day of Reckoning: Ex-Sweethearts Ready to Face the Music for Death of Their Newborn Son*, *PHILADELPHIA DAILY NEWS*, July 9, 1998, at 3A.

<sup>132</sup> Jeane MacIntosh & Thomas Hinton, *Killer's New Life—Baby Slayer Brian Has It Good in Fla.*, Feb. 7, 2005, *NEW YORK POST*, at A15 (Peterson received a 24-month sentence and Grossberg received a 30-month sentence).

buried it.<sup>133</sup> Again, both were charged with criminal homicide.<sup>134</sup> These cases, in which women (and sometimes their partners) kill or abandon a newborn after expressing a desire to be rid of it invoke steep criminal charges and the greatest anger and disgust, as shown by numerous comments made about the Pennsylvania couple, including calls for the death penalty.<sup>135</sup>

### CONCLUSION

In most cases of neonaticide, women are silenced because society considers their crimes horrific and vilifies the women as monsters.<sup>136</sup> Additionally, in the vast majority of cases, women accept guilty pleas or, if they go to trial, rarely testify. Thus, stories of neonaticide are seldom heard, but instead, are repressed by law and society as the dark and monstrous side of maternity.

*Stephanie Daley* and *Just Another Girl on the I.R.T.* tell a woman-centered story about the dark or “shadow side of pregnancy.”<sup>137</sup> They depict how neonaticide could happen, and how family and others could be complicit in denying a teen’s pregnancy. The comparison of *Stephanie Daley* and *Just Another Girl on the I.R.T.* also evokes cinematic judgment about culpability and punishment, and serves as a warning against hasty judgment in cases of neonaticide. As Ebert asks in his review of *Stephanie Daley*:

What would a satisfactory ending be? Guilty? Innocent? Forensic revelations? We have been tutored by Hollywood to expect all the threads to be tied neatly at the end. But real life is more like this movie: Frightened and confused people are confronted with a situation they cannot understand, and those who would help them are powerless. Some cases should never come to trial, because no verdict

<sup>133</sup> Steve McConnell, *Police: Dead Baby’s Father Planned ‘to get rid’ of Child*, June 14, 2011, THE TIMES TRIBUNE, available at <http://thetimes-tribune.com/news/police-dead-baby-s-father-planned-to-get-rid-of-child-1.1161519#axzz1dillJEMW>.

<sup>134</sup> Josh Wengler, *Lake Ariel Couple in Custody for Child Murder*, WAYNEINDEPENDENT.COM, June 13, 2011, <http://www.wayneindependent.com/news/x1162604251/Lake-Ariel-couple-in-custody-for-child-murder>.

<sup>135</sup> See, e.g., McConnell, *supra* note 133 (posting readers’ comments including: “They should never see again, period”; “He does not deserve to spend another day living on this planet”; “Fry him!”).

<sup>136</sup> See MORRISSEY, *supra* note 15, at 2 (stating throughout history, women have been portrayed repeatedly as evil and dangerous in myths and legends, and the media is responsible for society’s response to these crimes).

<sup>137</sup> Brougher Q&A, *supra* note 28.



would be adequate.<sup>138</sup>

Ebert's comments raise the question of whether society should punish women who commit neonaticide after psychological denial and dissociation.

Many legal and medical reformers argue that women who deny pregnancies should receive therapy, not punishment, which is the practice in countries, such as England and Canada, which have Infanticide Acts.<sup>139</sup> A young woman such as Stephanie would be found guilty of Infanticide, not murder, in England if she killed her newborn while her mind was unbalanced from having given birth, a condition which is generally asserted and taken as true without any proof.<sup>140</sup> She would likely receive a probated community sentence and therapy.<sup>141</sup> This therapeutic approach is supported by Lundquist, who questions the ethics of judging denied pregnancies:

The mechanisms of denial are fascinating, and may serve to illuminate the denied pregnancy phenomenon in important ways, but the ethical conclusions born of cognitive analysis may ultimately be more meaningful. . . . It might be tempting to judge rejected pregnancy an act of bad faith in which the pregnant subject assumes a sort of helplessness in the face of overwhelming social norms, but if the dissociation characteristic of denied pregnancy happens below the level of consciousness, to do so would be both unkind and descriptively incorrect.<sup>142</sup>

While we might agree with Lundquist that a woman suffering pervasive denial should not be punished, we probably agree—at least in the United States—that a young woman like Amy Ellwood, or like the Pennsylvania couple, who intentionally kills a newborn, should receive punishment. This sentiment is probably stronger in the United States, which focuses on the “innocent victims,” than in some countries that have evolved a more compassionate response to women who kill newborns.

By raising cultural awareness about unwanted pregnancy, films such as

<sup>138</sup> Roger Ebert, *Stephanie Daley*, ROGEREBERT.COM, June 1, 2007, <http://rogerebert.suntimes.com/apps/pbcs.dll/article?AID=/20070531/REVIEWS/705310301>.

<sup>139</sup> See MEYER & OBERMAN, *supra* note 5, at 11 (noting the infanticide statutes in England led to the vast majority of defendants receiving probationary sentences and healthcare interventions, instead of prison sentences).

<sup>140</sup> See Ayres, *supra* note 120, at 59–60 (discussing since the time of the Infanticide Act, mothers who kill children under one “are presumed to be acting under the stress of postpartum hormonal imbalance”).

<sup>141</sup> *Id.*

<sup>142</sup> Lundquist, *supra* note 75, at 149.

*Stephanie Daley* and *Just Another Girl on the I.R.T.* have the potential to challenge cultural norms about punishment and bring a more balanced and informed view about this problem. A primary tool these films offer for jurisprudence is the depiction of pregnancy as not merely a desired experience, but as a rejected or unwanted experience. These films give voice to women silenced by social and legal discourse, and illustrate the often overlooked distinction between denial and concealment, factors that influence questions of culpability and punishment.

As Orit Kamir notes, “we can learn a great deal about law from watching movies.”<sup>143</sup> Films invite viewers to sit as jurors, and unlike traditional media accounts or actual cases, provide a deeper understanding about the enigma of unwanted pregnancy and neonaticide, thus carrying the potential to shape social constructions and sentiments and result in a more just treatment of women who kill unwanted newborns.

<sup>143</sup> Kamir, *supra* note 20, at 257 (internal quotation marks omitted).

