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What About The Rights Of The Infant With Disabilities? Responses To Infanticide As Function Of Infant Health Status

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Abstract

Building on recent work in the US, we examined the influence of infant disability status and defendant and juror gender on reactions to infanticide cases. Participants (282 juror-eligible adults) read one of four cases in which a parent is charged with first degree murder in the death of a four-month old. The cases varied on the dimensions of infant health status (healthy and typically developing or with a severe disability) and defendant gender (mother or father). Participants then completed case-related judgments, including guilt, and defendant and victim sympathy, similarity, and empathy. In addition to some gender differences, the results showed pervasive effects of infant health status on perceptions of parental responsibility, verdict, and sentencing. When the infant was portrayed as having a disability, the mock jurors were less likely to hold the parent responsible for the infant's death, less likely to render a guilty verdict, and more likely to recommend lenient sentences. The mock-juror participants also reported more sympathy and empathy for the defendant, and held fewer negative beliefs about the defendant. The data overall suggest that adults perceive the life of an infant with a severe disability to be fundamentally unworthy. They are sympathetic to the infant's murder and likely to render less punitive judgements and sentences. Such discriminatory attitudes stand in sharp contradiction to the legal rights of all children with disabilities as described in the UN Convention on the Rights of the Child.

Keywords

infants with disabilities, mercy killing, rights of children

What About The Rights Of The Infant With Disabilities? Responses To Infanticide As Function Of Infant Health Status

The past few decades have brought much awareness and promotion of the rights of adults with disabilities. It is not clear, however, whether the rights of infants born with developmental disorders have been given the same respect as those of adults. Recent research shows that children living with disabilities continue to be at higher risk of maltreatment resulting in death than children who do not have disabilities, particularly during the first year of life (Bottoms et al, 2011; Overpeck et al, 2011). And although courts are said to have rejected the idea that some infants' lives have less value than others (Fortin, 2009), in practice, legal responses to infanticide have taken into account the health or disability status of the infant as well as the gender of the perpetrator (Ferguson et al., 2008). Our aim in this study was to determine whether there continue to be less harsh attitudes toward parents who kill (either intentionally or accidentally) their infants who have disabilities than toward those who kill their healthy infants. Building on the work of Bottoms et al (2011), we examined mock jurors' perceptions of infanticide in response to scenarios that varied infant disability status, defendant gender, and juror gender. There is a long history of mock-juror trial research in psychology. Participants generally are not expected to be knowledgeable of the law; rather the purpose is to attempt to identify existing biases or stereotypical beliefs that could affect jury behavior.

Like adults, children with disabilities have fundamental rights under Canadian and international law. The UN Convention on the Rights of the Child (hereafter the Convention) has been ratified almost globally, including by Canada in 1991. The Convention explicitly affords the same rights to children with disabilities as typically developing children, including the basic right to life and protection from maltreatment. The Convention also provides additional rights to

ensure their optimum development (Sobsey, 2007). Such respect for the rights of children with disabilities is not apparent in practice. Data demonstrate that a child with a disability is at elevated risk of maltreatment (Sullivan & Knutson, 1998; 2000) and of fatal child abuse (De Haan, 1998). Moreover, when children with disabilities are the victims of filicide, their parents are often acquitted or even commended for ending their child's 'apparent misery' (Bottoms et al., 2011).

Judges appear to have empathy for mothers who kill their disabled children (Dawson, 2006; Tuns, 2000; Watson, 2009). Consistent with the arguments of bioethicist Peter Singer (e.g., Singer & Kuhse, 1985), judges, when they are lenient with parents who kill their disabled child, express concern for the well-being and happiness of the child's caregiver (Tuns, 2000). Singer argues in favour of selective infanticide and does not see the killing of infants and young children with disabilities as disrespectful of adults with disabilities, but simply a means to promoting greater happiness for others through the ending of a life with no promise. Many judges, it seems, agree. In sentencing Ontario resident Lisa Thompson who attempted to murder her child with cerebral palsy, for example, the judge declared that although the court has great respect for persons with disabilities, it is also necessary to consider the situation of their caregivers (Tuns, 2000). With this in mind, the sentence involved only counselling and curfews. Similarly lenient sentencing is pervasive in other jurisdictions. Bette Bottoms and her colleagues (2011) cite examples including a US mother receiving a sentence of five years for starving her child with cerebral palsy to death; a mother in China receiving a three year suspended sentence after suffocating her paralyzed daughter; and a two year suspended sentence given to a father in England for murdering his severely disabled son. Both judges and juries appear to hold less punitive attitudes toward those who hurt or kill infants and children with disabilities.

There has been little systematic empirical study of judgments of infanticide. Norman Finkel and his colleagues (2000) report one of the few studies of attitudes toward women who kill their infants. Their key findings show that although infanticide by mothers is seen as first degree murder, sentencing is significantly less than for other forms of murder. But what about when infant victims are portrayed with disabilities, and what about father-perpetrated infanticide?

Bottoms et al (2011) extended the work of Finkel by conducting the first mock trial research in which juror's responses to father-perpetrated infanticide were assessed as a function of juror gender and infant victim disability status. Juror gender had pervasive effects with females more likely to believe that the father intended to kill the infant (the prosecution argued intentional smothering while the defense argued pneumonia caused the infant's death). However, regardless of juror gender, shorter sentences were determined appropriate for fathers who were convicted of killing the infant when the infant was portrayed as severely disabled due to a rare congenital brain condition. Interestingly, the verdict given by the mock jurors – choices included guilty of first-degree murder, guilty of reckless conduct, or not guilty – did not vary with the health status of infant. Bottoms et al (2011) suggest that the equivalent verdicts with lighter sentences when infants with disabilities are killed reflect the value placed on the infant's life by the juror. According to the law, a parent who kills their child is clearly guilty whether that child is disabled or not. And Canadian principles of sentencing, while allowing for reduced sentences in light of mitigating circumstances [*Criminal Code*, Section 718.2 (a)], also require that increased sentences be given if an offence is motivated by physical disability [*Criminal Code*, Section 718.2 (i)]. Nonetheless there seems to be a belief that parents who kill a child with a

disability are to be pitied rather than punished. Such attitudes may stem from media reports which generally express sympathy for such parents.

Lucardie and Sobsey (2005) discussed the stigmatizing language used by the media to describe persons who have disabilities and how this may contribute to attitudes toward them. The 1997 headline, "The nightmare of coping with kids who aren't normal," which appeared after Vancouver parents murdered their four children with disabilities illustrates this point (Tait, 1997, as quoted in Lucardie & Sobsey, 2005, p. 100). Not only does this title suggest that children with disabilities are not normal, but also that caring for them is a terrible experience (Lucardie & Sobsey, 2005). When Danielle Blais drowned her 6-year-old son Charles in a bathtub in 1996, she was described in the *Montreal Gazette* as living a nightmare as a single mother of a son with autism. And when Robert Latimer killed his 12 year-old daughter, Tracy, much of the media reporting of the case expressed great sympathy to Latimer, even reporting that Tracy's cerebral palsy left her too disabled to request to die (Sobsey, 1995). Interestingly, a poll conducted at the time by the *Calgary Sun* received 500 responses from readers, 92% of whom expressed a belief that Latimer was justified in killing his daughter. And as recently as March 2012, Global Television in Canada aired a documentary on the "mercy killing" of children with disabilities. Featured along with Robert Latimer was Anne Corriveau, a mother who wishes to end the lives of her two children who have been diagnosed with Sanfilippo syndrome. Ms. Corriveau also was sympathetically featured on the popular US talk show, *Dr. Phil* (April 13, 2012). Such media presentations can profoundly influence public attitudes (cf., McClure, Puhl & Heuer, 2011; Thakker, 2012).

In addition to the health status of the infant or child, several researchers have shown that there are pervasive, albeit not always consistent, gender differences in mock jurors' perceptions

of cases involving child abuse (Bottoms et al., 2011). Although there is evidence of males reacting more harshly to cases of filicide than females (Ferguson, et al 2008), female mock jurors generally have rendered harsher judgements than males, particularly where the defendant has been male. For example, in cases of infanticide, Finkel, Burke, and Chavez (2000) found that women were significantly more likely to render a first degree murder verdict than were men, and Bottoms et al. (2011) found that females were significantly more likely to render guilty verdicts and be more likely to perceive male defendants to have acted with intent to kill. It has been suggested that women's judgements are harsher than men's because women generally are the primary caregivers of their children. They may, in consequence, feel more compassion for any child who is being maltreated (Bottoms et al., 2011). However, we might also presume that they may feel more compassion for the female defendant, particularly where she is raising a child with disabilities. It is possible, then, that juror gender is by defendant gender with female jurors being more lenient toward mothers and harsher toward fathers. In fact, the effect of gender stereotypes is strong in court decisions.

Since the 1970s (e.g., Fontaine & Emily, 1978), there has been a tendency for judges to respond differentially by gender of the defendant in cases of filicide. As Fontaine and Emily (1978) demonstrated, judges typically seek information about the individual and her circumstances when the defendant is female, but about details of the maltreatment or death when the defendant is male. Wilczynski and Morris (1993) analysed 474 cases of filicide and found that compared with mothers, fathers were significantly less likely to be charged with manslaughter (rather than murder) and also less likely to be believed to have diminished capacity at the time of the murder. And in a subsequent comparison of British court decisions regarding infanticide between 1980 and 1990, Wilczynski (1997) found that fathers were almost twice as

likely to be prosecuted as mothers, and that only mothers were ever granted bail. As Kapardis (2010), explains “the judges [may have] considered offending by females as out-of-role and, consequently, focused more on the type of woman she was and her motives” (p. 207).

Similar gender differences have been found in research settings. For example, Rogers and Davies (2007) asked their participants to read a case scenario depicting child sexual abuse against a male victim perpetrated by either a man or a woman. Participants perceived female perpetrators as less responsible than male perpetrators, and interestingly, participants also perceived the victim to be more believable when the sexual abuse was committed by a man rather than a woman. It would seem that traditional gender stereotypes may have socialized people to view women as “affectionate, able to devote self completely to others, eager to soothe hurt feelings, helpful, kind, sympathetic, loves children” (Eagley, 1987, p.16). Violence, in contrast, is seen as a characteristic of maleness. As a result, there may well be a tendency for judges and lay people, when examining cases of filicide, to attribute less responsibility and blame to the mother than they would to the father, even if case details are the same otherwise. As Dobson and Sales, (2000) explain, jurors arrive at court with stereotypes and beliefs about justice, particularly about women and children. These must be expected to affect their judgments about infanticide.

Our study aimed to build on these findings. Using the same mock trial paradigm as Bottoms et al (2011), we expanded on the existing research by assessing jurors’ perceptions of both father-perpetrated and mother-perpetrated infanticide of disabled and nondisabled infants. In addition, whereas the previous research was conducted only with undergraduate students, we included both undergraduate students and community adults as participants. Based on the findings of Bottoms et al (2011) and Finkel et al (2000), we hypothesized that sentences given to

those convicted of killing an infant with disabilities would be more lenient than those convicted of killing a typically developing infant, and we anticipated that both the gender of defendant and the gender of juror would affect case judgements, affective ratings, and beliefs related to the case.

Method

Participants. A total of three hundred and three jury-eligible participants from a small city in the province of Nova Scotia agreed to participate in the study. Their participation was elicited through university and college classes, workplaces, and neighborhood centres. Data from 21 were discarded due to incorrect responses on the comprehension test leaving a final sample of 282. The demographics of the sample are presented in Table 1.

Table 1:
Demographic Characteristics of Respondents

Characteristic	N	%
Gender		
Male	86	30.5
Female	196	69.5
Total	282	100.0
Ethnicity		
First Nations	17	6.0
Hawaiian or other Pacific Islander	1	.4
Asian Canadian	2	.7
African Canadian	9	3.2
Caucasian	223	79.1
Other	30	10.6
Total	282	100.0
Education		
< high school	12	4.3
High school/GED	68	24.1
Some university	135	47.9
2-3 year diploma or degree	30	10.6
Four year university degree	33	11.7
Master's degree	3	1.1

Doctoral degree	1	.4
Total	282	100.0
Parental status		
Parent	89	31.6
Nonparent	193	68.4
Total	282	100.0
Age ranges		
18-24	166	59.9
25-34	34	12.3
35-44	30	10.8
45-54	25	9.0
55-64	20	7.2
>65	2	.7
Total	177	99.9

Materials. Each participant was provided a booklet that contained the following: (1) A mock trial (see Appendix A). The mock trial described a fictitious murder case in which four-month-old Edward Johnson was found dead in his crib. Four case conditions were presented such that the perpetrator was either the mother or the father and infant Edward was either a typically developing healthy baby or was born with a rare and serious genetic disorder called Cardiofaciocutaneous Syndrome (CFS). Participants in the relevant conditions were told that CFS was characterized by malformations of the face and head, delayed growth, low muscle tone, cardiac defects, feeding problems, skin and hair abnormalities, and mental retardation. In each condition, the prosecuting attorney argued that the parent was a cold blooded killer who was responsible for Edward's death, and the defence attorney argued that Edward died from accidental asphyxiation from being placed in bed on his stomach in a nest full of blankets. Each was followed by testimony from the prosecution witnesses and defence witnesses, including Edward's pediatrician. The pediatrician made fewer comments in the non-disability conditions, simply stating that mother/father was a good parent and described her/him in a positive light. In the disability condition, the pediatrician also recalled the time when he told Edward's parents that Edward would be severely disabled for the rest of his life. In the non-disability

condition, *all* parts referring to disability were omitted. Each condition of the mock trials was rated by a different sample of 15 adults to ensure they were easily understood, realistic, consistent, and unbiased

(2). A comprehension check followed the mock trial description which asked for the health status and age of the infant, and the sex of the defendant. (3). Following Bottoms et al (2011), participants were then asked to make case judgments with regard to the verdict, sentence, responsibility, and blame. For the verdict, participants were provided legal definitions of and asked to choose among (a) not guilty (b) guilty of criminal negligence causing death, and (c) guilty of first degree murder. We should note here that since this was a psychological rather than legal study, we did not provide manslaughter as an option. Moreover, we did not use the term infanticide since in law in Canada it applies only to females. Our aim was to maintain consistency with the method of Bottoms et al (2011), in order to make comparisons between their U.S. study and this one, and in order to compare public attitudes to male and female perpetrators.

After being provided with the definitions described above, participants were then asked to provide a short explanation for their verdict, to recommend a jail sentence in years, and to rate intent and culpability. (4) Using a 7-point likert-type rating scale ranging from 1 (strongly disagree) to 7 (strongly agree), perceived similarity, sympathy, and empathy toward the defendant and the infant were measured as described by Bottoms et al (2011). Fourteen items were used to measure empathy for the defendant and the infant, six items were used to measure sympathy for the defendant and the infant, and four items were used to measure similarity to the defendant and the infant. In each case, higher scores were indicative of greater affect (empathy, sympathy and similarity).

(5). The 9 item belief scale that Bottoms et al used was also included. Statements were presented with a 6-point likert-type scale on which participants rated their agreement with 1 being "strongly disagree" and 6 being "strongly agree". Four items measure beliefs about the defendant, two items measure beliefs about defendant mental illness, and three items measure beliefs about infant worth. Higher scores indicate more negative attitudes toward the defendant, a stronger belief that the defendant was mentally ill at the time of the infant's death, and a stronger belief that the infant's life is of little value.

(6). The last part of the booklet comprised demographic questions used to assess participant age, sex, race/ethnicity, highest level of education, and parental status.

Procedure. After looking over the booklet and agreeing to take part in the study, participants were randomly assigned to one of four conditions: mother perpetrator, healthy infant; mother perpetrator, infant with CFS; father perpetrator, healthy infant; and father perpetrator, infant with CFS, such that there were approximately equal numbers of participants in each condition: 64 (40 females, 24 males); 77 participants (52 females, 25 males); 72 participants (48 females, 24 males), and 69 (56 females, 13 males). Participants completed the booklet independently in a quiet place. Completion time ranged from 15 to 20 minutes.

Results

Verdict. A total of 12.1% of jurors found the defendant not guilty, 49.3% found the defendant guilty of criminal negligence causing death, and 38.7% found the defendant guilty of first-degree murder. After participants settled on a verdict, they were asked to provide a reason for their decision in a space provided on the questionnaire. Content analyses were performed on answers provided to the open-ended question which asked participants to explain

the reason for their verdict in the case. A second rater assessed one-third of the responses and agreement was at 98 percent. Where participants gave more than one reason, all were recorded.

For participants who chose criminal negligence causing death, the content analysis indicated that this decision was based on the following factors (1) the defendant's admission of guilt; (2) no perceived evidence of intentionality; (3) no perceived premeditation; (4) a recognition that the defendant was not ready for parenthood (i.e., ignorance); (5) the lack of resuscitation of the infant; (6) the statement about the defendant having no history of violence; and (7) perceived temporary insanity.

For participants who chose first degree murder, content analysis indicated that this decision was based on the following factors: (1) the defendant's admission of guilt; (2) perceived evidence of intentionality; (3) characteristics of the defendant; (4) the autopsy report; (5) behavior during arrest; and (6) the lack of resuscitation of the infant.

Finally, for participants who chose not guilty, content analysis indicated that this decision was based on the following factors: (1) the possibility of accidental suffocation; (2) the statement about the defendant having no history of violence; (3) a recognition that the defendant was not ready for parenthood (i.e., ignorance); (4) compassion for the defendant; (5) and perceived mental illness of the defendant.

Separate 2 (infant disability status) x 2 (juror gender) x 2 (defendant gender) univariate analyses of variances (ANOVAs) were conducted on case related judgments, defendant and infant empathy, sympathy, and similarity, and beliefs related to the case. Due to multiple comparisons, alpha level was dropped to less than or equal to .02.

Case judgments. Main effects of infant disability status were obtained on attributions of responsibility for Edward's death and on guilty verdicts when he was presented as having CFS. When the infant was portrayed as having CFS, participants attributed less responsibility to the defendant for Edward's death, $F(1, 274) = 6.32, p = .01$, ($M = 3.97, SD = .10$) compared to when the infant was portrayed as nondisabled ($M = 4.34, SD = .11$). And participants were significantly less likely to find the defendant guilty of either first degree murder or criminal negligence when the infant was portrayed with CFS than when he was portrayed as healthy and developmentally normal ($M = 1.37, SD = .06$) ($M = 1.12, SD = .06$), $F(1, 274) = 8.84, p < .003$.

Females overall recommended longer prison sentences than males for all defendants, ($M=13.84, SD=.74$; $M=10.56, SD = 1.22$ respectively; $F(1,221) = 5.31, p = .02$. However, there was a significant interaction between infant disability status and defendant gender on sentence length (in years), $F(1, 221) = 6.72, p = .01$. Shorter prison sentences were recommended for fathers who killed infants with disabilities, than for those who killed their healthy infant, ($M = 9.28, SD = 1.36$) compared to when they murdered their infants with no disabilities ($M = 16.55, SD = 1.26$). This pattern did not exist for female defendants.

There was a significant interaction between infant disability status and participant gender on attributions of blame to the defendant, $F(1,274) = 5.21, p = .02$. Male participants held the defendant more blameworthy in the infant's death when he was portrayed as healthy and typically developing ($M=4.40, SD = .20$; $M=3.61, SD=.17$).

Defendant and infant empathy, sympathy, and similarity ratings

Empathy. There was a significant main effect of infant disability status on empathy for the

defendant, $F(1, 268) = 6.88, p = .009$. Significantly more empathy was indicated for the parents of Edward when the infant was portrayed with CFS ($M = 20.20, SD = .83$), than for parents of Edward portrayed as a healthy infant ($M = 17.02, SD = .88$). There was also a significant main effect of participant gender on empathy for the defendant, $F(1, 268) = 10.15, p < .002$; males showed higher rates of empathy than females ($M = 20.54, SD = 1.02$; $M = 16.67, SD = .67$).

Sympathy. There was a significant interaction between victim disability status and participant gender on sympathy for the defendant, $F(1, 274) = 5.82, p = .02$. Males had more sympathy for the defendant when the infant had a disability ($M = 13.34, SD = .81$ v. $M = 9.11, SD = .94$).

There was a significant interaction between infant disability status and participant gender on sympathy for the infant, $F(1, 272) = 6.16, p = .01$. That is, males had significantly less sympathy for infants portrayed as having CFS ($M = 16.36, SD = .52$) compared to infants portrayed as developmentally normal ($M = 19.30, SD = .60$).

Similarity. There was a significant interaction between participant gender and defendant gender on similarity to the infant, $F(1, 273) = 6, p = .02$. Males felt more similar to the infants when the defendant in the case was male ($M = 3.93, SD = .35$ v. $M = 2.64, SD = .42$).

Beliefs related to the case

Infants who were portrayed as having CFS were believed to have less worth ($M = 6.63, SD = .30$) than infants who were portrayed as healthy and typically developing ($M = 4.89, SD = .33$), $F(1, 271) = 15.51, p = .001$. And when the infant was portrayed with CFS, respondents had fewer negative beliefs about the defendant ($M = 11.04, SD = .38$ v. $M = 12.55, SD = .41$), $F(1, 270) = 7.21, p < .01$.

Relations among case judgments; defendant and infant empathy, sympathy, and similarity ratings; and beliefs related to the case

Correlation analyses were performed to examine relations among case related judgments; defendant and infant empathy, sympathy, similarity; and beliefs related to the case. Correlations are presented in Table 2. As shown in the table, there were significant correlations between infant disability status and beliefs about the defendant, infant worth, verdict, sentencing and attributions of blame and responsibility.

Table 2:
 Correlations among scales

	ID	B	IW	DM	V	S	DR	DB
ID	1	.17**	-.25**	-.02	.17**	.17**	.13*	.13*
B	.17**	1	-.13*	.21**	.50**	.45**	.38**	.66**
IW	-.25**	-.13*	1	.01	-.12*	-.17**	-.07	-.09
DM	-.20	.21**	.01	1	.21**	.12	.22**	.19**
DE	-.18**	-.38**	.40**	-.09	-.43**	-.35**	-.41**	-.47**
DSY	-.17**	-.50**	.21**	-.06	-.59**	.46**	.51**	-.55**
DS	-.14*	-.19*	.17**	.06	-.19**	-.10	-.21**	-.23**
IE	.02	.27**	-.06	-.02	.19**	.15*	.06	.09
ISY	.18**	.16*	-.34**	.01	.07	.22**	.07	.05

ID infant disability status
 B beliefs about defendant
 IW infant worth
 DM defendant mental illness
 DE defendant empathy
 DSY defendant sympathy
 DS defendant similarity
 IE infant empathy
 ISY infant sympathy

V verdict
 S sentence
 DR defendant responsibility
 DB defendant blame

*p<.05

**p<.01

In essence, the more the participants felt that the infant's life was unworthy, the more they felt empathy and sympathy for, and similarity to the defendant, the less they held negative beliefs about the defendant, the less they felt sympathy for and similarity to the infant, the more they recommended lower sentences, and the more they rendered lenient verdicts.

Discussion

We had predicted that, by using a mock-trial paradigm to assess responses to a case of infanticide, we would obtain differences in verdicts, sentencing, case judgements, affective ratings, and beliefs about the case as a function of infant disability status, participant (mock-juror), and defendant status. We also anticipated differences based on whether the defendant was the infant's mother or father and the gender of the mock-juror participant. The data suggest considerable support for the predictions.

First, the effects of infant disability status were pervasive. Compared with judgments about a typically developing infant, when the infant was portrayed as having Cardiofaciocutaneous Syndrome, mock jurors were less likely to hold the parent responsible for the infant's death, less likely to render a guilty verdict, and they suggested more lenient sentences, especially for father perpetrators. That a more lenient sentence was recommended when less parental responsibility was attributed is consistent with Canadian law. The *Criminal Code of Canada* does have as a fundamental principle of sentencing that it be proportionate to offender responsibility. However, it seems unlikely that the general sample from whom data were obtained would be aware of the principles of sentencing. In fact, this leniency is likely an outcome of the greater sympathy and empathy for the defendant mock-juror participants demonstrated, and their fewer negative beliefs about the defendant – for example that the

defendant is prone to violence or has psychological problems. Participants evidenced less sympathy for the infant and rated the life of the infant as less worthy than that of the typically developing and healthy infant. The correlational data suggest that when adults perceive the life of an infant as fundamentally unworthy (in this case the infant with CFS), they are sympathetic to the infant's murder and likely to render less punitive judgements and sentences. The belief that the life of an infant with a disability is of less importance than the life of a non-disabled infant has been labeled 'aversive disablism'; this describes subtle forms of discriminatory behaviour that stem from the belief that persons with disabilities are of less value than others (Deal, 2007).

The findings are consistent also with the belief that infants with disabilities are more challenging to care for than infants without disabilities (Bottoms et al., 2011), and so their caregivers deserve additional understanding and compassion. It may well be that the participants took into account the difficulties the parent of the infant with CFS would have been facing and in consequence believed the defendant's actions to reflect stress or trauma rather than violence or aggression. Such beliefs not only support the notion that the parents in these situations are the victims and the children are the problems (Morgan, 2009), but also that the parents' actions are understandable or even justified given the circumstances. Such attitudes are in contravention of the fundamental right of *all* children (not just healthy ones) to life and to be treated without discrimination as required under the Convention on the Rights of the Child.

Examining Canada's compliance with its obligations under the Convention, Sobsey (2007) concludes that the government shows "utter disregard for article 6 protection of the right to life and survival for children with severe disabilities" (p. 391). Little has been done to recognize that children with disabilities are at high risk of abuse and homicide, and little has been done to educate the public or those working with or for children on the rights of the child

(Howe & Covell, 2007). The ongoing gap between policy and practice in Canada, as elsewhere, will likely remain until punishments that are seen as unacceptable for parents who kill their healthy infants are perceived to be equally unacceptable for those who kill their infants with disabilities, no matter how severe (Sobsey, 2007).

A second troubling finding was the particular leniency shown to fathers who were found to have killed Edward when he was described as having CFS. Both male and female participants recommended a shorter sentence for fathers who were found to have killed their infant when that infant had CFS. This finding, consistent with that of Bottoms et al (2011), again indicates less concern about the right to life of an infant with disabilities. Judicial decisions and past research indicate that female defendants are treated more leniently than male defendants in the criminal justice system (e.g., Wilczynski, 1997). It appears that although fathers generally are held more accountable for filicide than are mothers, this is not so when the infant is disabled. Given that this research was conducted in Canada, this may be, at least in part, a legacy of the much publicized cases such as the Latimer and Blais cases, among many others, as noted previously. As stated by Segal and Spaeth (1996), such hallmark cases are “more likely to establish precedential guidelines for future cases” (p. 376), to stand out and be a model for comparison for both the general public and the justice system.

Third are the effects of mock juror or participant gender. Although there were no gender differences in verdicts chosen, females recommended longer sentences and were less empathetic and sympathetic to the defendant. These findings are consistent with much of the literature on the effects of juror gender. Compared with males, females generally are found to be more pro-victim and to render harsher penalties (e.g., Finkel, Burke & Chavez, 2000; ForsterLee et al, 2006; Quas et al, 2002). Nonetheless, it is worth emphasizing that both male and female

participants in this study responded in a discriminatory manner to the killing of the infant when he was presented as having CFS.

Interestingly, we obtained more effects of infant disability status than did Bottoms et al. (2011) with research in the US – a country which has not ratified the Convention. This difference may have resulted from our larger and more diverse sample, our use of more succinct case information, or the apparent support for “compassionate homicide” or “mercy killing” as described in the media in Canada. These factors can be disentangled in further research. It would be interesting also to use the same research protocol but with a female infant victim, varied ages of the victim, and varied levels of disability. Would the same leniency be shown to those who kill young adults? Would the same sympathy be shown to a parent who killed a female child or a child with a behavior disorder?

In summary, the findings of this study have implications for understanding jury behavior. The findings underscore the importance of changing public attitudes toward infants with disabilities. Believing such infants to be fundamentally less worthy than their healthy peers, jury-eligible adults hold parents who kill their infants with disabilities to be worthy of compassion and leniency. The most basic of human rights accorded to all children without discrimination under the Convention on the Rights of the Child – the right to life – is violated. A message is sent that there are times when it is at least understandable if not acceptable for a parent to kill a child. In a country that prides itself on its human rights record, its Charter of Rights and Freedoms, and its ratification of the UN Convention on the Rights of the Child, such attitudes and beliefs should be unacceptable.

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Appendix A

The People of Canada versus Michael Johnson

Case Overview:

Michael D. Johnson is being charged with the first degree murder of his four month old disabled son, Edward Samuel Johnson.

Edward was born with a rare and serious genetic disorder called Cardiofaciocutaneous Syndrome (CFS). CFS is present before birth, and it is caused by the mutation of four different genes: BRAF, MAP2K1, MAP2K2, and KRAS. Only about 300 people in the world suffer from this disorder. It is characterized by malformations of the face and head, delayed growth, low muscle tone, cardiac defects, feeding problems, skin and hair abnormalities, and severe mental retardation.

On the night of February 19th, 2011, Michael was the sole supervisor of his four month old son, Edward, as his wife, Sherry Johnson, was working the night shift. It is alleged that around 12:10 a.m., Michael suffocated Edward. He then made a call to 911 at 12:26 a.m. claiming that he had found his infant son dead in his crib when he went to check on him.

The Prosecution's Case:

The prosecutor described Michael as a cold blooded killer who was responsible for the death of his infant son, undeserving of sympathy, and guilty of first-degree murder.

The police officer who was first on the scene (Officer Wiley) noted in his report that Michael seemed extremely nervous as he was being questioned. Michael told him that when he went to check on Edward, he noticed something very wrong and immediately called 911. Under oath, Wiley also stated that there were many blankets under and surrounding Edward's body. Later Michael confessed that he had held a pillow over Edward's mouth for a few seconds that night to try to get him to stop crying.

The forensic pathologist, Dr. Choi, who examined Edward shortly after he was found, reported that the autopsy revealed acute pulmonary emphysema, bloody discharge from the mouth and nostrils, and bloody froth in the respiratory passages. She also explained that Edward had petechiae, which is characterized by purple spots on the body caused by broken blood vessels. "All of these findings," Choi reported, "are characteristic of mechanical suffocation. There was also no physical evidence that Michael tried to resuscitate Edward. In my professional opinion," she concluded, "Edward died of intentional suffocation". On cross examination, Choi acknowledged that accidental suffocation was a possibility as Edward was routinely put to bed on his stomach; however, she insisted it was unlikely.

Sherry's younger sister, who would help out with Edward a few times per week, testified that Michael was having a very difficult time adjusting to parenthood – particularly given

Edward's disability. "He confided in me on at least two occasions that he wasn't ready to be a father, especially the father of a mentally disabled infant," she testified.

The Defense's Case:

"Michael Johnson is *not* a cold-blooded killer," the defense attorney argued. "The sad reality," she stated, "is that Edward died from accidental asphyxiation caused by being placed on his stomach in a nest of blankets. Edward died as a result of his father's affectionate but misguided actions. Michael did his best as a father. I think we all do our best as parents, but none of us is perfect". The defense attorney called for acquittal.

Michael's wife, Sherry, took the stand and stressed that Michael was a wonderful father who could never hurt his baby. She also stressed the fact that Michael had no history of violence. They were both under stress, she acknowledged, because of Edward's disability, but they were coping well. "We are both devastated by this tragedy," she concluded.

Edward's pediatrician, Dr. Child, was called to the stand to describe the quality of care given by Edward's parents. Dr. Child provided a positive character assessment of Michael, stating that he was a good father, and describing him as friendly, gentle, and concerned. He recounted the appointment, when Edward was two months, when he first told Michael and Sherry about Edward's condition. "Although we all knew something was seriously wrong with Edward," Child testified, "no parent could be prepared for a diagnosis of CFS. They were both devastated when they learned that Edward would be severely disabled for the rest of his life. My heart went out to them".