

# **A Measure of Justice for Regina McKnight**

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In 1991, Regina McKnight turned to cocaine to numb the pain she felt as a result of her mother's sudden death. Ms. McKnight happened to be pregnant at the time. When she suffered a stillbirth, the State of South Carolina charged her with homicide by child abuse, claiming that her cocaine use caused the stillbirth despite the fact that scientific research does not link the two.

Ms. McKnight was the first woman in South Carolina history to be convicted of this crime for having suffered what both the prosecution and defense agreed was an unintentional stillbirth. As a result, McKnight, now 30, has spent nearly eight years in jail, sentenced to serve 12 years on a 20-year sentence. Throughout this time, she has been deprived of her liberty, her rights, and her connection with her children: All because of myth, not scientific fact.

But recently, on an occasion all too rare, the truth finally resulted in a measure of justice. In May, the South Carolina Supreme Court unanimously reversed Ms. McKnight's conviction. The court concluded that she did not get a fair trial -- because her attorney failed to challenge the junk science that was used to convict her. The court specifically noted that experts should have been called to testify about studies "showing that cocaine is no more harmful to a fetus than nicotine use, poor nutrition, lack of prenatal care, or other conditions commonly associated with the urban poor."

## **"Crack Moms": The Rush to Judgment**

Much has been written about the "rush to judgment" that occurred in the 1980s around the problem of cocaine use and so-called "crack moms" and "crack babies." At that time, it was believed that children exposed prenatally to cocaine would be inevitably and irrevocably damaged and that their mothers were unfit to parent. Public outrage led to the arrest of women who were pregnant and could not overcome their addictions to cocaine or other drugs. Courts in every state except South Carolina have said such prosecutions violate law and common sense.

Public outrage also led to unprecedented numbers of children being removed from their mother's care. By 1995, the number of children in South Carolina and across the country in foster care reached an all-time high of over 550,000, due in large part to child removal measures based on maternal use of cocaine during pregnancy.

All this, and yet, almost 20 years of research has yet to identify a "crack baby" syndrome. From a scientific point of view, the public outrage was unwarranted and public policies were misguided. The idea that cocaine caused serious damage to the fetus was based more on animal studies than human studies. And in those human studies, methodological flaws were well documented. Yet it was assumed by the public and child welfare officials alike that pregnant women who used cocaine could not be trusted to bring up their children.

We have learned a lot about drug addiction and prenatal drug exposure since the 1980's. We know that drug addiction is a disease, a complex disorder involving the brain. And we know more about the effects of prenatal cocaine exposure. The largest study of more than 8,000 deliveries showed that medical problems in cocaine-using pregnant women are rare — they occur less than 5 percent of the time — and were not related to cocaine when variables such as alcohol and tobacco use were controlled.

## **Stillbirth Is Not a Crime**

Because the decision said that Ms. McKnight did not receive a fair trial, the State was entitled to re-try Ms. McKnight -- to have a second chance to prove that her cocaine use caused the stillbirth. Even though, as a matter of science the state would be unable to do this, continuing to fight would mean enduring another murder trial and risking another conviction in spite of the truth. By pleading guilty to involuntary manslaughter Ms. McKnight could finally get out of jail and avoid additional years of uncertainty and anguish. No woman, however, should have to plead guilty to a crime she didn't commit.

At least 96 other women in South Carolina have been arrested since the 1980's. Some for homicide, most on lesser charges of child abuse and drug delivery, because they continued their pregnancies to term in spite of a drug or alcohol problem. At least twelve criminal cases are currently pending. Many, many more cases are in the civil child welfare system because South Carolina treats a single unconfirmed positive drug test on a pregnant woman or newborn as a basis for presuming neglect. As a result, too many children have been removed from their homes and separated from mothers and families who love them. All this has occurred because policy and law lag behind medical understanding.

Yes, there are things women do that increase health risks during pregnancy -- but they generally have far more to do with poverty and lack of access to health care than anything else. And yes, there are drug users who are inadequate mothers, but there are also drug users who are competent mothers. With the right kind of support and the right kind of treatment for those who are addicted, they can care for their children. Families can be preserved.

It is time for South Carolina and its Supreme Court to reexamine its costly and counterproductive approaches to the issue of pregnant women and drug use. Neither continuing a pregnancy to term -- nor suffering a stillbirth should be treated as a crime. The real crime is for the state and the public to continue to ignore science and the overwhelming evidence that treatment, not punishment, is what is best for pregnant women, children and families.

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