

**THE WRONGFUL CONVICTIONS OF WOMEN FOR
CRIMES THAT NEVER HAPPENED AND
WHAT WE CAN LEARN FROM THEM**

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ABSTRACT

Nearly three-quarters of all female exonerees were wrongly convicted of crimes that never actually happened (“no-crime wrongful convictions”). This Essay considers the over-representation of women in no-crime wrongful convictions, the gender biases which may lead to the initial misclassification of a noncriminal event as a crime, women’s vulnerability to wrongful plea bargains, and the evidentiary hurdles to proving innocence that women experience in no-crime cases.

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I. THE OVER-REPRESENTATION OF WOMEN IN NO-CRIME CASES

Sabrina Butler served five years on Mississippi's death row for the murder of her infant son; she was exonerated after it was proven that he had tragically died from an undiagnosed medical condition.¹ Beverly Monroe spent over a decade in prison for murdering her lover; she was eventually exonerated by evidence that showed he had in fact died by suicide.² Audrey Edmunds was convicted of shaking to death a child in her care; she served eleven years in prison before she was exonerated because the evidence relating to the so-called "shaking" and shaken-baby syndrome was unreliable.³ Patricia Stallings was convicted of murdering her young son; she was exonerated when it was shown that he died from a rare genetic condition.⁴ Kristine Bunch was convicted in the murder-arson of her son; she was exonerated after it was proven that the fire in which he died was not arson at all.⁵

These women came from different parts of the country, were of different ages and races, and had different educational backgrounds. But they shared one terrible commonality: each was wrongly convicted of a crime that never happened in the first place. The National Registry of Exonerations ("NRE") data reveal that women constitute approximately 8.5% (285/3,348) of all known exonerees who were wrongly convicted and exonerated.⁶ While many people included in the NRE were wrongly

1. See Maurice Possley, *Sabrina Butler*, NAT'L REGISTRY OF EXONERATIONS (Aug. 21, 2019) [hereinafter Possley, *Sabrina Butler*], <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3078>.

2. See Stephanie Denzel, *Beverly Monroe*, NAT'L REGISTRY OF EXONERATIONS (Nov. 7, 2016), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3482>.

3. See Alexandra Gross, *Audrey Edmunds*, NAT'L REGISTRY OF EXONERATIONS (June 2, 2018), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3201>. See generally AUDREY EDMUNDS & JILL WELLINGTON, *IT HAPPENED TO AUDREY: A TERRIFYING JOURNEY FROM LOVING MOM TO ACCUSED BABY KILLER* (2012).

4. See Michael Perry, *Patricia Stallings*, NAT'L REGISTRY OF EXONERATIONS (May 16, 2020), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3660>.

5. See Kristine Bunch, *Convicted of Murder by Arson – But the Fire Was Accidental*, NW. CTR. ON WRONGFUL CONVICTIONS, <https://www.law.northwestern.edu/legalclinic/wrongfulconvictions/exonerations/in/kristine-bunch.html> (last visited Aug. 25, 2023).

6. See *Exonerations in the United States Map*, NAT'L REGISTRY OF EXONERATIONS [hereinafter *NRE Data*], <https://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx> [<https://perma.cc/Z7RC-VU8W>] (last visited Aug. 25, 2023). As of August 25, 2023, the National Registry of Exonerations ("NRE"), which tracks exoneration data since 1989, included 3,348 people who were wrongly convicted and exonerated; of these, approximately 8.5% (285) were female. *Id.* The NRE data is limited because it only captures the people who were wrongly convicted and exonerated and only includes those cases that

convicted of crimes committed by someone else (“actual crime wrongful convictions”), over *one-third* of all known exonerees involve people wrongly convicted of crimes that never happened in the first place (“no-crime wrongful convictions”).⁷ Even more strikingly, nearly *three-fourths* (72%) of all known female exonerees were wrongly convicted in no-crime cases.⁸

No-crime wrongful convictions occur when innocent people are wrongly convicted of crimes that never actually happened.⁹ Police, medical personnel, or forensic experts might misidentify a natural or accidental event as a crime or overlook a catastrophic medical condition to attribute a death to murder.¹⁰ A suicide might be mislabeled a homicide.¹¹ A false accusation about an event that never happened is believed to be true.¹² Police might plant evidence or fabricate criminality where no crime ever happened in the first place.¹³

The factors that contribute to women’s convictions in no-crime cases are similar to what you might expect to see in all wrongful convictions. At the top of the list are perjury/false accusations, official misconduct, bad forensic science, and inadequate legal assistance.¹⁴ But there also are a few important distinctions. Mistaken eyewitness identification was a contributing factor in *zero* cases where women were wrongly convicted in no-crime cases.¹⁵ That misidentification was not present in any cases at all perhaps can be explained because eyewitness identification in no-crime cases is not at issue because the woman is often known to the “victim” or because a police officer or a forensic expert was the main

were identified by or shared with the NRE. The number of people who were wrongly convicted but whose innocence has not been established is unknown, and perhaps unknowable. JESSICA S. HENRY, *SMOKE BUT NO FIRE: CONVICTING THE INNOCENT OF CRIMES THAT NEVER HAPPENED* 4 (2020).

7. See HENRY, *supra* note 6, at 4, 7.

8. *NRE Data*, *supra* note 6. In real numbers, as of August 25, 2023, 206 of the 285 female exonerees (72%) in the NRE database were wrongly convicted in a no-crime case. *Id.*

9. See HENRY, *supra* note 6, at 7.

10. See e.g., Perry, *supra* note 4.

11. See e.g., Denzel, *supra* note 2.

12. See e.g., Maurice Possley, *Frances Keller*, NAT’L REGISTRY OF EXONERATIONS (Aug. 23, 2017) [hereinafter Possley, *Frances Keller*], <https://www.law.umich.edu/special/exoneration/pages/casedetail.aspx?caseid=5156>. See generally HENRY, *supra* note 6, at 43–60.

13. See e.g., Maurice Possley, *Crystal Allen*, NAT’L REGISTRY OF EXONERATIONS (Apr. 27, 2022) [hereinafter Possley, *Crystal Allen*], <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=6106>. See generally HENRY, *supra* note 6, at 61–81.

14. The factors that contribute to wrongful convictions typically include eyewitness misidentification, false confessions, official misconduct, forensic error, perjured testimony, and ineffective lawyering. HENRY, *supra* note 6, at 11.

15. See *NRE Data*, *supra* note 6.

witness.¹⁶ So too, DNA had almost no role whatsoever in the exoneration of women from no-crime cases in contrast to the nearly one-third of all exonerees who used DNA to establish their innocence.¹⁷ False confessions also appeared in 27% of all exonerations involving women in no-crime cases as compared to the roughly 12% of all exonerations that included a false confession.¹⁸ As will be briefly discussed later, these difference have important policy implications for those interested in wrongly convicted women and criminal justice reform.

This Essay briefly explores some of the issues that make women more vulnerable to no-crime wrongful convictions, including the gender biases and the related intersectional biases based on race, class, and sexual orientation, that contribute to the wrongful conviction of women in no-crime cases. This Essay also briefly examines the unique obstacles to exoneration that arise when women are wrongly convicted. This Essay will conclude by briefly identifying and discussing areas for future research, with an eye to improving the criminal legal system and preventing future wrongful convictions for women.

II. THE ROLE OF GENDER IN NO-CRIME WRONGFUL CONVICTIONS

No-crime wrongful convictions are triggered in three primary ways: (1) a misclassification error occurs in which the police, medical personnel, or the prosecution erroneously label a non-criminal event as a crime;¹⁹ (2) a false accusation is made against an innocent person and is wrongly believed to be true by officials;²⁰ and (3) the police engage in misconduct by planting evidence or otherwise fabricating criminal charges against an innocent person.²¹ In each instance, an innocent person is wrongly accused of committing a crime that did not happen. Criminal justice actors accept that accusation as truth and coalesce around a guilt-presumptive investigation and legal proceeding that culminates in a wrongful conviction, all without a critical examination of whether a crime occurred in the first place.

16. The use of quotation marks is to emphasize that there was no crime and therefore no actual victim.

17. See *NRE Data*, *supra* note 6.

18. *Id.*

19. See Jessica S. Henry, *Women and No-Crime Wrongful Convictions: The Misclassification Error*, 17 L.J. FOR SOC. JUST. 15, 21–35 (2023) (discussing the misclassification of several noncriminal events as crimes).

20. See HENRY, *supra* note 6, at 47 (discussing when the police erroneously accept a false accusation as true).

21. See *id.* at 64–81 (discussing the reasons for false accusations).

A. Gender Biases and the Misclassification Error

Misclassification errors refer to the designation of a noncriminal event as a crime.²² The psychology of cognitive biases provides one lens through which we can examine how the misclassification error first occurs.

Cognitive biases refer to the ways in which human judgments and decision-making are influenced by unconscious thought patterns.²³ They reflect heuristics, or mental shortcuts, that can lead to unconscious errors in judgment and processing.²⁴ In wrongful conviction cases, for instance, cognitive biases, such as tunnel vision, can cause investigating officers to “select and filter the evidence that will ‘build a case’ for conviction, while ignoring or suppressing evidence that points away from guilt.”²⁵ In tunnel vision, once a conclusion is prematurely reached, officers ignore or dismiss evidence that contradict their hypothesis and maximize or overemphasize evidence that supports their theory.²⁶

Gender biases contribute to—and reinforce—the misclassification error in subtle and in overt ways.²⁷ Consider, for instance, that women’s involvement in violent no-crime wrongful convictions often involves allegations of criminality against family members or loved ones.²⁸ When a woman is accused of harming a loved one, they may be perceived as

22. See Henry, *supra* note 19, at 18.

23. By at least one estimate, over 150 types of cognitive biases exist, although that number varies greatly depending on how cognitive biases are defined and categorized. See e.g., Jeff Desjardins, *Every Single Cognitive Bias in One Infographic*, VISUAL CAPITALIST (Aug. 26, 2021), <http://www.visualcapitalist.com/every-single-cognitive-bias/>; Richard L. Byyny, *Cognitive Bias: Recognizing and Managing Our Unconscious Biases*, THE PHAROS, Winter 2017, at 2, <https://www.med.upenn.edu/inclusion-and-diversity/assets/user-content/cognitive-bias.pdf>.

24. See Daniel Kahneman & Amos Tversky, *Subjective Probability: A Judgment of Representativeness*, 3 COGNITIVE PSYCH. 430, 430–31 (1972).

25. Keith A. Findley & Michael S. Scott, *The Multiple Dimensions of Tunnel Vision in Criminal Cases*, 291 WIS. L. REV. 291, 292 (2006) (quoting Dianne L. Martin, *Lessons About Justice from the “Laboratory” of Wrongful Convictions: Tunnel Vision, the Construction of Guilt and Informer Evidence*, 70 UMKC L. REV. 847, 848 (2002)).

26. See *id.*

27. See Henry, *supra* note 19, at 19 (discussing generally female gender stereotypes that contribute to no-crime wrongful convictions); Andrea L. Lewis & Sara L. Sommervold, *Death, But Is It Murder? The Role of Stereotypes and Cultural Perceptions in the Wrongful Convictions of Women*, 78 ALB. L. REV. 1035, 1039–41 (2014) (explaining gender stereotypes of women in the criminal justice system).

28. See Lewis & Sommervold, *supra* note 27, at 1039 (“About forty-five percent of all female exonerees were convicted of physically harming or killing a close family member, a loved one, or a child in their care.”); Emma E. Fridel & James A. Fox, *Gender Differences in Patterns and Trends in U.S. Homicide, 1976–2017*, 6 VIOLENCE & GENDER 27, 31–34 (2019).

“doubly deviant” for violating the law and for violating the rules of what it means to be a woman.²⁹ Women who fail to conform to social expectations of mothering, who violate the social norms of being a good wife or girlfriend, or who fall outside heteronormative standards may be wrongly excoriated and condemned by police and prosecutors³⁰ and in the media.³¹ One recent study of female exonerees wrongly convicted in no-crime homicides found that 78% had been charged with killing a current or former partner, parent/step-parent, or child.³²

The wrongful conviction of Sabrina Butler illustrates how gender biases—and the intersection of gender with race and class—can lead to the initial misclassification error.³³ In 1989, then seventeen-year-old Sabrina Butler found her nine-month-old son still and lifeless in his room.³⁴ Despite her best efforts at CPR, and the subsequent efforts of her neighbor and the emergency room staff at a nearby hospital, her son was pronounced dead.³⁵ Emergency personnel called the police, who

29. Chimène I. Keitner, *Victim or Vamp? Images of Violent Women in the Criminal Justice System*, 11 COLUM. J. GENDER & L. 38, 39 (2002); Lewis & Sommervold, *supra* note 27, at 1040–41 (quoting ANN LLOYD, DOUBLY DEVIANT, DOUBLY DAMNED: SOCIETY’S TREATMENT OF VIOLENT WOMEN 36 (1995)).

30. See KATHERINE VAN WORMER, WORKING WITH FEMALE OFFENDERS: A GENDER-SENSITIVE APPROACH 94 (2010) (discussing how prosecutors use stereotypes of women to appeal to juries); see also Jeff Coen, *Mom Convicted of Strangling Son*, CHI. TRIB. (Oct. 27, 2005, 12:00 AM), <https://www.chicagotribune.com/news/ct-xpm-2005-10-27-0510270160-story.html> (describing prosecutor’s closing statement to jury about Nicole Harris, wrongly convicted of murdering her child: “[s]he told whatever lies she could to avoid responsibility”).

31. Lewis & Sommervold, *supra* note 27, at 1042–46; Maria E. Grabe et al., *Gender in Crime News: A Case Study Test of the Chivalry Hypothesis*, 9 MASS COMM’N & SOC’Y 137, 149 (2009) (demonstrating greater media sensationalism for women accused of violent crime relative to men).

32. See Nicky A. Jackson et al., *An Exploratory Study of “No-Crime” Homicide Cases Among Female Exonerees*, 32 J. AGGRESSION, MALTREATMENT & TRAUMA 107, 114–15 (2023).

33. See Possley, *Sabrina Butler*, *supra* note 1. In its most basic form, intersectionality refers to overlapping and intersecting forms of discrimination that combine and interact in a cumulative manner. For a richer discussion, see, for example, Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1251–52 (1991), and Elizabeth Webster & Jody Miller, *Gendering and Racing Wrongful Convictions: Intersectionality, “Normal Crimes,” and Women’s Experiences of Miscarriage of Justice*, 78 ALB. L. REV. 973, 1027–33 (2015).

34. Sabrina Butler, *I Spent More Than Six Years as an Innocent Woman on Death Row*, TIME (May 30, 2014, 1:18 PM), <http://time.com/2799437/i-spent-more-than-six-years-as-an-innocent-woman-on-death-row/>; Possley, *Sabrina Butler*, *supra* note 1. See generally Butler v. State, 608 So. 2d 314, 317 (Miss. 1992).

35. Butler, *supra* note 34.

aggressively approached Butler as a murder suspect rather than as a grieving, young mother.³⁶

Stunned by the unimaginable loss of her child and interrogated by the police for hours, Butler eventually gave inconsistent statements that were deemed a confession to her “crime.”³⁷ A Mississippi prosecutor charged Butler with capital murder, relying heavily on her so-called confession and on testimony by a medical expert that her son had been abused.³⁸ After a short trial, at which her lawyer presented no evidence in her defense, Butler was convicted and sentenced to death.³⁹ She spent five years as the only woman on Mississippi’s death row.⁴⁰ Butler’s conviction was later reversed after evidence was presented demonstrating that the cause of her son’s death was most likely an undiagnosed kidney disorder and that the “abuse” was abdominal bruising from inexpert CPR attempts to save his young life.⁴¹ Butler was acquitted in 1995 after a retrial and was fully exonerated of any wrongdoing.⁴²

Butler’s status as a young, black, poor mother in Mississippi certainly played a role in how the medical personnel perceived her—and her child’s death. In Butler’s case, her child died without an easy explanation. Rather than performing a full examination to determine what might have caused her child’s death, medical personnel viewed Butler as a “bad mother” and promptly reported her to the police.⁴³ From the outset, the police embraced Butler as a murderer to the exclusion of all other possible theories, and failed to pursue evidence that would have provided an entirely innocent explanation for her baby’s death.⁴⁴

Butler’s wrongful conviction occurred in the context of mothering.⁴⁵ But gender biases can be prevalent even where there is no interfamilial relationship at all. In 2001, Jennifer Hall was wrongly convicted of intentional arson for a fire that was later proven to be the product of faulty electrical wiring.⁴⁶ Prosecutors claimed Hall set the fire because

36. *Id.*

37. *Butler*, 608 So. 2d at 316–18.

38. *Id.* at 318; Possley, *Sabrina Butler*, *supra* note 1.

39. Possley, *Sabrina Butler*, *supra* note 1.

40. *Id.*

41. *Id.*

42. *Id.*

43. Lewis & Sommervold, *supra* note 27, at 1053–54.

44. *See* Possley, *Sabrina Butler*, *supra* note 1.

45. Lewis & Sommervold, *supra* note 27, at 1053–54.

46. *Jennifer Hall: A New Hairstyle Helped Wrongfully Convict Jennifer Hall of Arson*, NW. CTR. ON WRONGFUL CONVICTIONS, <https://www.law.northwestern.edu/legalclinic/wrongfulconvictions/exonerations/mo/jennifer-hall.html> (last visited Aug. 25, 2023).

she was seeking attention.⁴⁷ To support the “attention seeking” theory, prosecutors cited Hall’s new hair style on the day of the fire.⁴⁸ Prosecutors, relying on gender stereotypes, twisted an entirely innocent occurrence (a new hairstyle) as evidence that Hall was trying to gain attention—which they then claimed bolstered their theory that Hall intentionally set her workplace ablaze.⁴⁹

Or consider the cases of Leigh Stubbs and Tammy Vance, who were wrongly convicted of assaulting another woman.⁵⁰ Stubbs and Vance were charged with assaulting another woman.⁵¹ The prosecution relied on testimony from a widely discredited odontologist who claimed to find bite marks that no one else saw, and who went on to testify, without any support whatsoever, that bite marks would almost always be expected in cases involving people who were gay.⁵² Again without evidence, another prosecution witness claimed that “homosexual crimes...they are very sadistic... [t]hey do what we call the over kill. . . . They’re more gory.”⁵³ Flagrant biases—along with unreliable forensic science—formed the basis of Stubbs’ and Vance’s convictions. They were sentenced to forty-four years in prison and served twelve years in prison before they were finally exonerated.⁵⁴

As these case studies demonstrate, women may become suspects where they are not emotional enough or where they are too emotional; or where they do not look like or act like a good mother, wife, or girlfriend. These gender biases, often combined with intersectional biases based on race, ethnicity, socioeconomic status, and sexual orientation, leave women particularly susceptible to no-crime wrongful convictions.

Gender-fueled cognitive biases in the criminal legal system are powerful. They influence the work of the police, forensic experts, and prosecutors who engage in guilt-presumptive investigations that overlook or minimize evidence that would otherwise demonstrate no crime occurred and instead double-down on evidence that suggests guilt based on their framing of women as outside gender norms. Cognitive

47. *Id.*

48. *Id.*

49. *See id.*

50. For a detailed accounting of Leigh Stubbs’s wrongful conviction, see VALENA E. BEETY, *MANIFESTING JUSTICE: WRONGLY CONVICTED WOMEN RECLAIM THEIR RIGHTS* (2022).

51. *Id.*

52. *Id.* at 108–35; *see also* HENRY, *supra* note 6, at 100–01; Maurice Possley, *Leigh Stubbs*, NAT’L REGISTRY OF EXONERATIONS (Oct. 3, 2021) [hereinafter Possley, *Leigh Stubbs*],

<https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5398>.

53. Possley, *Leigh Stubbs*, *supra* note 52; *see also* HENRY, *supra* note 6, at 100–01.

54. *See* Possley, *Leigh Stubbs*, *supra* note 52.

biases cause prosecutors, judges, jurors, and even criminal defense lawyers to blindly accept the premise that a particular woman committed a crime, rather than asking the critical question of whether a crime occurred in the first place.

As the cases above illustrate, when officials blindly act upon these biases, the consequences can be tragic.

B. False Accusations

False accusations can also result in no-crime wrongful convictions. In these cases, a person is wrongly accused of criminal activity that did not happen. People make false accusation for a wide range of motivations: to obtain revenge, win child custody disputes, hide wrongdoing, create an alibi, obtain a financial benefit, receive sympathy and attention, or because of a mental illness.⁵⁵ To be clear, NRE data includes numerous false accusations of criminality *by* women against men in wrongful conviction cases that run the gamut from rape to burglary.⁵⁶ But women have also experienced the trauma and consequences of being falsely accused and convicted of crimes that did not happen.

One classic example of false allegations that resulted in wrongful convictions was a set of daycare child abuse hysteria cases that occurred in the 1980s and 1990s.⁵⁷ These cases took place during a time in history where women, particularly young women with preschool children, were entering the work force in record numbers, either because they wanted to work or because their economic reality required them to do so.⁵⁸ Day care centers also were relatively new, and anxieties about leaving

55. HENRY, *supra* note 6, at 50.

56. See, e.g., Dolores Kennedy, *Gary Dotson*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3186> (last visited Aug. 25, 2023) (falsely accused of rape); Maurice Possley, *Mark Weiner*, NAT'L REGISTRY OF EXONERATIONS (Jan. 30, 2018), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4715> (falsely accused of kidnapping); Maurice Possley, *Bradley Crawford*, NAT'L REGISTRY OF EXONERATIONS (Nov. 4, 2013), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4293> (falsely accused of stalking); Ken Otterbourg, *Israel Grant*, NAT'L REGISTRY OF EXONERATIONS (Aug. 27, 2019), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5483> (falsely accused of robbery); Maurice Possley, *Michael Waithe*, NAT'L REGISTRY OF EXONERATIONS (Apr. 7, 2018), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4631> (falsely accused of burglary).

57. See *What Meaning Can We Draw From These Cases?*, PBS: FRONTLINE, <https://www.pbs.org/wgbh/pages/frontline/shows/terror/meaning/> (last visited Aug. 25, 2023).

58. *Id.*

children in the care of strangers were running high in the national consciousness.⁵⁹

It was within this larger context that allegations of ritual child abuse at day care centers swept through the country.⁶⁰ Once the specter of wrongdoing was raised, children were subjected to suggestive questioning by therapists who used highly improper interview techniques.⁶¹ The children told stories that were often fantastical, implausible, and inconsistent.⁶² Yet, these stories formed the basis of wrongful convictions for at least fifty-nine people who were later exonerated from child sexual abuse allegations in day care and educational settings; twenty-six were women.⁶³ Although the motivations for these prosecutions were ostensibly to protect children from ritual abuse, the result caused tremendous harm to all involved.⁶⁴

Margaret “Kelly” Michaels was exonerated in New Jersey after serving five years of her forty-seven-year prison sentence for 115 offenses against nineteen children.⁶⁵ Among the allegations against her were that she stabbed children in the genitals with plastic utensils, forced children to eat cakes made from human feces, and made children play “duck, duck, goose” and sing “Jingle Bells” while naked.⁶⁶ None of this happened. Yet Michaels was only one of the many people whose lives were upended by false accusations of crimes that were entirely fabricated.

C. Police Plant Evidence

It may come as no surprise that police sometimes plant evidence and fabricate charges of crimes that never happened.⁶⁷ These cases often take place in poor communities, particularly communities of color, where men and women often are powerless against the egregious abuse of police

59. See *id.*; RICHARD BECK, WE BELIEVE THE CHILDREN: A MORAL PANIC IN THE 1980S xiv (2015).

60. See BECK, *supra* note 59, at xiv.

61. See Cynthia V. Ward, *Trauma and Memory in the Prosecution of Sexual Assault*, 45 L. & PSYCH. REV. 87, 113–14, 121 (2021).

62. See *id.* at 113, 118–21.

63. *NRE Data*, *supra* note 6. It bears noting that these are the cases for which a conviction and an exoneration are known.

64. See, e.g., Ward, *supra* note 61, at 113–23.

65. Maurice Possley, *Margaret Kelly Michaels*, THE NAT'L REGISTRY OF EXONERATIONS (June 11, 2023), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3867>; see also *State v. Michaels*, 652 A.2d 489, 493–503 (N.J. Super. Ct. App. Div. 1993) (detailing the facts), *aff'd*, 642 A.2d 1372 (N.J. 1994).

66. Lona Manning, *Nightmare at the Daycare: The Wee Care Case*, CRIME MAG. (Oct. 13, 2009), <http://www.crimemagazine.com/nightmare-day-care-wee-care-case>.

67. See HENRY, *supra* note 6, at 81.

officers who act with impunity and often without consequence.⁶⁸ The exact number of people impacted by police misconduct of this kind is unknown.⁶⁹ The NRE created a “groups registry,” an entirely separate exoneration database that collects metadata about widespread police misconduct.⁷⁰ The data includes thousands of cases dismissed after revelations of police misconduct, but is not individualized and may include people who were factually guilty but whose convictions were vacated due to the unreliable nature of the evidence against them.⁷¹ Conversely, it is virtually impossible to know how many people have been framed by police for crimes that did not happen where the misconduct was not uncovered or where there has been no official exoneration or dismissal.

Crystal Allen’s wrongful conviction for drug possession is just one example of police fabricating evidence.⁷² In April 2007, Allen was visiting the Ida B. Wells housing project in Chicago when Chicago officers Sergeant Ronald Watts and Kallatt Mohammed barged in and demanded to know “who was working.”⁷³ When Allen failed to tell them anything, they falsely charged her with drug possession.⁷⁴ In July, they again arrested Allen and again falsely charged her with drug possession.⁷⁵ She was wrongly convicted and sentenced to probation.⁷⁶ Watts and his crew led a regime of terror that went on for years.⁷⁷ When the wrongdoing by Watts and his colleagues was finally exposed, the prosecution dismissed more than 200 convictions.⁷⁸

68. See, e.g., Russell Covey, *Police Misconduct as a Cause of Wrongful Convictions*, 90 WASH. U. L. REV. 1133, 1137–66 (2013) (detailing the police misconduct in Tulia, Texas and the Rampart division of the LAPD that led to hundreds of wrongful convictions).

69. See *id.* at 1185.

70. See *The Groups Registry*, NAT’L REGISTRY OF EXONERATIONS, <https://exonerations.newkirkcenter.uci.edu/groups/group-exonerations> (last visited Aug. 28, 2023).

71. See *What Will You Find in the Groups Registry?*, NAT’L REGISTRY OF EXONERATIONS, <https://exonerations.newkirkcenter.uci.edu/groups/narrative/what-will-you-find-groups-registry> (last visited Aug. 28, 2023).

72. See *infra* Part III for further discussion of Allen’s wrongful conviction.

73. Possley, *Crystal Allen*, *supra* note 13.

74. See *id.*

75. See *id.*

76. See *id.*

77. See *id.*

78. *Id.*

III. WOMEN CONVICTED IN NO-CRIME CASES FACE UNIQUE ISSUES
AND EXONERATION OBSTACLES TRAUMA

While wrongful convictions are traumatizing for all exonerees,⁷⁹ women experience trauma that may be particularly acute given the crimes for which they are accused.⁸⁰ Because so many wrongly convicted women are convicted of killing or harming a family member, they simultaneously experience profound grief from the loss of a loved one, and amplified trauma from the unfairness of being falsely accused and wrongly convicted.⁸¹ In these cases, women may experience self-blame or shame for not having prevented the harm to their loved one, even though no crime occurred and even though they are entirely innocent.⁸² Wrongful incarceration also takes a heavy toll; women report that “one of the most devastating consequences” of their wrongful incarceration is the risk of losing their children to foster care or of having their parental rights permanently terminated.⁸³

A. *The Impact of Plea Bargaining*

My students are often perplexed by the idea that innocent people plead guilty to crimes they did not commit. In truth, a guilty plea is often the most reasonable option presented to a defendant—even an innocent one. Innocent defendants who insist on asserting their constitutional right to a trial risk sitting in jail for weeks or months while awaiting their day in court because they are too poor to make bail.⁸⁴ This pressure may feel particularly significant to women, who correctly believe that a guilty plea is the quickest route home to their children, employment, and other

79. See Zieva D. Konvisser, *Psychological Consequences of Wrongful Conviction in Women and the Possibility of Positive Change*, 5 DEPAUL J. FOR SOC. JUST. 221, 238–39 (2012) [hereinafter Konvisser, *Psychological Consequences*].

80. See *id.* at 242–45.

81. See Zieva D. Konvisser, *What Happened to Me Can Happen to Anybody: Women Exonerees Speak Out*, 3 TEX. A&M L. REV. 303, 303–66 (2015) [hereinafter Konvisser, *Women Exonerees Speak Out*]. See generally Holly M. Harner, Patricia M. Hentz & Maria C. Evangelista, *Grief Interrupted: The Experience of Loss Among Incarcerated Women*, 21 QUALITATIVE HEALTH RSCH. 454, 454–64 (2011).

82. Webster & Miller, *supra* note 33; Konvisser, *Women Exonerees Speak Out*, *supra* note 81, at 303–66.

83. Konvisser, *Psychological Consequences*, *supra* note 79, at 244.

84. Innocent defendants may also plead guilty to avoid the risk of receiving a more severe sentence if they go to trial and are convicted. See Candace McCoy, *Plea Bargaining as Coercion: The Trial Penalty and Plea Bargaining Reform*, 50 CRIM. L.Q. 67, 72 (2005). Informally referred to as the “trial penalty,” defendants receive harsher and more lengthy sentences after a jury trial than if they plead guilty. *Id.* at 79.

responsibilities.⁸⁵ Crystal Allen, one of the victims of the Watts misconduct scandal in Chicago, plead guilty to two felonies she did not commit and that did not happen in exchange for two probationary sentences.⁸⁶ Allen explained: “I was pregnant and the state offered a plea deal I couldn’t refuse I took the deal, even though I was innocent because I was afraid I would be sentenced to a lengthy jail term and was worried about my little daughter and my unborn baby.”⁸⁷

Erma Faye Stewart, a single mother of two, was arrested in Hearne County, Texas, as part of a drug sweep based on unreliable evidence provided by a confidential informant.⁸⁸ All but one of the twenty-seven people arrested were black, and all lived in a low-income housing project.⁸⁹ Stewart, unable to make bail and desperate to return to her children, plead guilty shortly after her arrest, and was sentenced to ten years of probation.⁹⁰ Months later, the prosecution dismissed the charges against the remaining twenty defendants—the ones who did not plead guilty—because the prosecution did not have reliable evidence to pursue the cases.⁹¹ Stewart, however, continues to suffer the devastating consequences that stemmed from being a convicted felon because her plea conviction was not vacated.⁹²

Exonerated women are frequently convicted on a guilty plea. Out of the 285 females in the NRE database, ninety-eight pled guilty to crimes they did not commit.⁹³ Out of those ninety-eight wrongful plea convictions, ninety-two females—or roughly 94%—pled guilty in no-crime cases.⁹⁴ Many of those no-crime plea bargains were in the context of drug cases (73/92).⁹⁵ A plea in those cases is often the fastest and most

85. See Stephen Jones, *Under Pressure; Women Who Plead Guilty to Crimes They Have Not Committed*, 11 CRIMINOLOGY CRIM. JUST. 77, 82–83 (2011).

86. Possley, *Crystal Allen*, *supra* note 13.

87. *Id.*

88. *Erma Faye Stewart and Regina Kelly*, FRONTLINE, <https://www.pbs.org/wgbh/pages/frontline/shows/plea/four/stewart.html> (last visited Aug. 28, 2023).

89. *Id.*

90. *Id.*

91. *Id.*

92. Michelle Alexander, *Go to Trial: Crash the Justice System*, N.Y. TIMES (Mar. 10, 2012), <https://www.nytimes.com/2012/03/11/opinion/sunday/go-to-trial-crash-the-justice-system.html>.

93. *NRE Data*, *supra* note 6. Notably, while only 23% of all male exonerees pled guilty (712/3,063), 34% of women pled guilty (98/285). *Id.*

94. *Id.*

95. *Id.* Thirty-two of the seventy-three female exonerees listed in the NRE who were wrongly convicted in no-crime drug cases came from Harris County where the Conviction Integrity Unit vacated hundreds of plea conviction to drug crimes after lab results demonstrated the absence of illegal drugs. *Id.*

efficacious way to resolve the criminal charges,⁹⁶ even though those charges are based on nonexistent crimes.

What innocent defendants may fail to appreciate is that it is very difficult to overturn plea convictions, even on a claim of actual innocence. Individuals often plead guilty in the context of a negotiated plea, and courts do not want to indulge what they perceive as a form of buyer's remorse.⁹⁷ Judges, prosecutors, and police officers are less likely to credit claims of innocence from people who admitted guilt under oath in open court.⁹⁸ In addition, there are significant procedural obstacles that prevent people who plead guilty from filing an appeal, including waivers of the right to appeal that are sometimes woven into plea bargains, and structural barriers that prevent people from presenting new evidence of innocence.⁹⁹

One final comment is worth making here. The NRE data reflects known exonerations, most of which involve wrongful felony convictions.¹⁰⁰ But misdemeanor charges and wrongful misdemeanor convictions are also very real. A misdemeanor is a crime that can be punished by up to one year in jail.¹⁰¹ Trespass, minor drug possession, simple assault, petty theft, and vandalism are all examples of misdemeanors.¹⁰² By one estimate, 13.2 million misdemeanor charges are filed every year, yielding millions of misdemeanor convictions annually.¹⁰³ Yet, there are only 111 total misdemeanor exonerations in the NRE database and only nineteen of those cases involved female defendants.¹⁰⁴

Because misdemeanors are punishable by no more than one year in jail, they are rarely litigated at trial and even less frequently appealed.¹⁰⁵ Innocence projects with limited resources cannot take on wrongful misdemeanor convictions, and it is a rare person that has the resources

96. See THEA JOHNSON, A.B.A. CRIM. JUST. SECTION, 2023 PLEA BARGAIN TASK FORCE REPORT 20 (2023), <https://www.americanbar.org/content/dam/aba/publications/criminaljustice/plea-bargain-tf-report.pdf>.

97. *Id.*

98. NRE, INNOCENTS WHO PLEAD GUILTY 1 (2015), <https://www.law.umich.edu/special/exoneration/Documents/NRE.Guilty.Plea.Article1.pdf>.

99. *Id.*

100. See *NRE Data*, *supra* note 6.

101. Megan T. Stevenson & Sandra G. Mayson, *The Scale of Misdemeanor Justice*, 98 B.U. L. REV. 731, 739 (2018).

102. *Id.*

103. *Id.* at 737.

104. *NRE Data*, *supra* note 6.

105. Nancy J. King & Michael Heise, *Misdemeanor Appeals*, 99 B.U. L. REV. 1933, 1939–41 (2019).

and tenacity to fight to clear their name from a wrongful misdemeanor conviction.¹⁰⁶ Even when they do, the path to misdemeanor exoneration is difficult.¹⁰⁷ The truth then is this: we know virtually nothing about the full scope of wrongful convictions in misdemeanors or their impact on women.

B. Exoneration Obstacles: Absence of DNA and the Challenge of Proving a Negative

Under the best of circumstances, exonerating the wrongly convicted is a herculean task, with nearly insurmountable legal and procedural obstacles at every turn.¹⁰⁸ But in actual crime wrongful convictions—where the wrong person is convicted of a crime committed by someone else—there always remains the sliver of hope that one day the actual perpetrator will be identified, and the truth will be revealed. In contrast, in no-crime wrongful convictions, there is no real perpetrator because no crime ever occurred at all. That leaves the wrongly convicted in a no-crime wrongful conviction case with the unenviable and nearly impossible task of proving a negative—that no crime ever occurred and that they are innocent of any wrongdoing.

Women face a steep path toward exoneration in part because many are wrongly convicted in no-crime cases.¹⁰⁹ One key distinction in these cases is that DNA evidence—which is widely considered to be one of the most conclusive ways to establish innocence—is often not available in no crime cases.¹¹⁰ Not surprisingly, DNA evidence was identified as a factor

106. See *Why So Few Misdemeanor Exonerations?*, NAT'L REGISTRY OF EXONERATIONS (Oct. 6, 2015), <https://www.law.umich.edu/special/exoneration/Pages/misdosoct2015.aspx>.

107. See, e.g., King & Heise, *supra* note 105, at 1961 (finding that in a sample of 403 misdemeanor appeals, only 11.2% succeeded).

108. Carrie Whitney, *Why Is It So Hard for the Innocent to Be Freed from Prison?*, HOWSTUFFWORKS (Oct. 23, 2020), <https://people.howstuffworks.com/innocence-project.htm>.

109. NAT'L REGISTRY OF EXONERATIONS, 2022 ANNUAL REPORT 13 (2023) [hereinafter NRE 2022 ANNUAL REPORT], <https://www.law.umich.edu/special/exoneration/Documents/NRE%20Annual%20Report%202022.pdf>; Molly Redden, *Why Is It So Hard for Wrongfully Convicted Women to Get Justice?*, MOTHER JONES (July/Aug. 2015), <https://www.motherjones.com/politics/2015/08/wrongfully-convicted-women-exonerations-innocence-project/>.

110. NRE Data from August 25, 2023, identifies fourteen out of 285 female exonerees where DNA was a contributing factor in their exoneration. *NRE Data*, *supra* note 6. Eleven involved actual crimes for which females were wrongly convicted of acts committed by another person, while three involved no-crime cases. *Id.* Perhaps the overall absence of exculpatory DNA evidence for women can be partially explained by the fact that women are often accused and wrongly convicted in inter-familial or child-care related crimes. As a result, the presence of DNA is neither exculpatory on inculpatory because the DNA would

that contributed to exoneration in only *three* no-crime cases involving female defendants.¹¹¹

And consider how DNA was used—and the role of gender biases—in one of those five cases. Then sixteen-year-old Fancy Figueroa went to the hospital, complaining she had been raped, after which she called the police.¹¹² Medical personnel at the hospital completed a rape kit; in the process, they also discovered that Figueroa was pregnant.¹¹³ The police decided that Figueroa must have fabricated her claim of rape to provide a sympathetic explanation for her pregnancy and, instead of investigating her rape allegation, charged her with a misdemeanor for filing a false report.¹¹⁴ Figueroa plead guilty with the understanding that the charges would be dismissed after six months for law-abiding behavior.¹¹⁵ Five years later, the DNA of twice-convicted rapist Vincent Elias was entered into a New York State DNA database.¹¹⁶ His DNA matched that found in the rape kit completed by Figueroa at the hospital.¹¹⁷ Elias pled guilty to raping Figueroa, and she was formally exonerated from filing a false report for a crime that was all too real.¹¹⁸

Without DNA evidence, women are forced to pursue other avenues for proving innocence. Their cases, particularly those that turn on a misclassification error, may turn into a postconviction “battle of the experts,” in which women attempt to present expert evidence of a noncriminal cause of death or injury.¹¹⁹ The expense, time, and legal and scientific expertise required to prepare and introduce that evidence, let alone prevail in court, can be insurmountable.¹²⁰

be expected given the time spent within the same environment as the actual or perceived crime scene.

111. See, e.g., Maurice Possley, *Lynn DeJac*, NAT'L REGISTRY OF EXONERATIONS (May 4, 2018), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3169>; Maurice Possley, *Fancy Figueroa*, NAT'L REGISTRY OF EXONERATIONS (July 26, 2014) [hereinafter Possley, *Fancy Figueroa*], <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4474>; and Maurice Possley, *Debbie Loveless*, NAT'L REGISTRY OF EXONERATIONS (Feb. 11, 2015), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3393>.

112. Possley, *Fancy Figueroa*, *supra* note 111.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. See Redden, *supra* note 109.

120. See *id.*

IV. CONCLUDING THOUGHTS AND FUTURE RESEARCH TOPICS

What little is known about women and wrongful convictions stems largely from the few and fortunate women who have been exonerated. Whether their stories are representative of all innocent women who are wrongly convicted is an area ripe for further examination. There are, however, factors specific to women which policymakers and the actors in the criminal legal system—police, prosecutors, defense lawyers and judges—would do well to keep in mind.

We know that the majority of female exonerees in the NRE are wrongly convicted in no-crime cases, and that many no-crime exonerations of females in violent crimes involve allegations of harm to family members and loved ones.¹²¹ How women come to be identified as suspects in the first place, and the role of biases based on gender, race, and socioeconomic status in the initial misclassification error is an area ripe for continued examination.¹²² Future research should also focus on what can be done to mitigate against these biases. For instance, is bias training effective in the first instance and, if so, what would effective training look like for police, prosecutors, the defense bar, and judges? Where medical diagnosis is critical to the initial crime classification error, what steps can be taken to ensure that medical personnel carefully consider noncriminal explanations for the harm or injury?¹²³

We know that women exonerees plead guilty more frequently than male exonerees.¹²⁴ We also know that the pressure on women to plead guilty is significant, particularly for those who hold a primary caregiver role, and that the criminal legal system is particularly reluctant to overturn convictions based on plea bargains.¹²⁵ What policy solutions can and should be implemented to better address the unique issues presented by women in the context of plea bargaining? Do bail reform and pre-trial release positively impact the reliability of plea conviction outcomes and reduce wrongful convictions for women? Should the plea process be modified to better account for the painful reality that many women plead guilty to obtain a speedy resolution so that they can return to their caregiving roles rather than because of actual guilt?

Research demonstrates that women face significant exoneration obstacles. What can be done to better ensure representation for women

121. NRE 2022 ANNUAL REPORT, *supra* note 109, at 13.

122. *See, e.g.*, Lewis & Sommervold, *supra* note 27; Webster & Miller, *supra* note 33.

123. HENRY, *supra* note 6, at 179 (proposing that medical personnel engage in devil's advocate analysis to consider whether other medical factors exist that run counter to their conclusion and suggesting in homicide cases independent review of the medical evidence).

124. NRE Data, *supra* note 6.

125. *See* JOHNSON, *supra* note 96, at 20.

in post-conviction proceedings? Some innocence projects will not take a case without DNA, which may leave wrongly convicted women without representation—yet another significant obstacle to exoneration.¹²⁶ Should innocence projects continue to require DNA as a prerequisite for representation, particularly given the frequent absence of DNA in cases involving women? Are there additional advocacy strategies specific to women and wrongful convictions?

A final note is worth mentioning. The wrongful conviction literature is rich with discussions about policy reforms to reduce error in the criminal legal system. Yet, it is also true that certain proposals—like those that improve eyewitness identification or those that increase access to DNA testing—will have less impact on women than reforms that target false accusations, forensic errors, and false confessions. Policymakers would do well to consider the factors that most contribute to women’s wrongful convictions in no-crime cases and tailor reforms to address those specific concerns.

The wrongful conviction of women for crimes that never happened raises a unique set of legal challenges and concerns that are ripe for further research. By considering the unique qualities about women, the role that gender plays in the official—but incorrect—determination that a crime occurred; the consequences of plea bargaining; and the unique obstacles to exoneration that women face, we can begin to develop a better framework for understanding and preventing women’s convictions in no-crime wrongful conviction cases in the first place.

126. See *Request Representation*, INNOCENCE PROJECT, <https://innocenceproject.org/submit-case/> [<https://perma.cc/5MZE-8NFT>] (last visited Aug. 28, 2023) (“The Innocence Project only accepts cases on post-conviction appeal in which DNA testing can prove innocence. If the case does not involve biological evidence or DNA, visit the Innocence Network to see if there is a program in your area that provides broader legal and investigative assistance, and if, so, write to them.”).