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### Remarks on Manifesting Justice: Wrongly Convicted Women Reclaim Their Rights

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## **REMARKS ON *MANIFESTING JUSTICE: WRONGLY CONVICTED WOMEN RECLAIM THEIR RIGHTS***

**AMBER BAYLOR, VALENA BEETY, AND SUSAN STURM\***

*The following are remarks from a panel discussion co-hosted by the Columbia Journal of Gender and Law and the Center for Gender and Sexuality Law on the book Manifesting Justice: Wrongly Convicted Women Reclaim Their Rights.\*\**

VALENA BEETY:

Thank you everyone for coming today, and thank you to the Columbia Journal of Gender and Law for organizing this event. My deep gratitude also goes to Professors Sturm and Baylor for participating today and engaging with my book; I truly appreciate it.

I wrote *Manifesting Justice*<sup>1</sup> to share stories that I didn't see being told and being shared. My own story as a litigator, which I weave throughout the book, began with being a Rape Victim Advocate in college. That experience made me want to go to law school and become a prosecutor. I wanted to prosecute sexual violence and domestic violence because I thought that incarceration would stop these cycles of violence. I reasoned that if we incarcerate repeat perpetrators, then we can stop their behavior. I was a carceral feminist.

I went to law school, graduated, and got my dream job. I became a prosecutor and prosecuted domestic violence and sexual violence. That's when I

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\* Amber Baylor, Associate Clinical Professor of Law, Founding Director, Criminal Defense Clinic, Columbia Law School; Valena Beety, Professor of Law, Deputy Director, Academy for Justice, Arizona State University Sandra Day O'Connor College of Law; Susan Sturm, George M. Jaffin Professor of Law and Social Responsibility, Director, Center for Institutional and Social Change, Columbia Law School. Thank you to the Columbia Journal of Gender and Law for hosting and organizing this event.

\*\* The event occurred at Columbia Law School on September 22, 2022, and was organized by Editors Ariana Zlioba and Nina Jaffe-Geffner, with thanks to past Editor Rachel Rein.

<sup>1</sup> VALENA BEETY, *MANIFESTING JUSTICE: WRONGLY CONVICTED WOMEN RECLAIM THEIR RIGHTS* (2022).

realized incarceration was not the solution I thought it was. Prosecution was not the solution I thought it was.

In most of my cases, the survivors wanted nothing to do with me. They did not want to be part of the criminal legal system and did not want to be put on the witness stand to be judged and re-live their trauma. Many of them also had some ongoing personal connection with the person who was being charged.

In response, I, as a prosecutor, became more and more callous in my own behavior and treatment of survivors. I thought that getting the conviction and following through on a case was the most important thing. Yet even this goal did not ultimately lead to the desired results. Serious crimes were often dropped down to misdemeanors, simply to get a conviction. I quickly became disillusioned.

I was only a prosecutor for a short period of time and then I became an innocence litigator. I started litigating on behalf of people who had been wrongfully convicted in Mississippi. I worked with some clients who were on death row, not as their main attorney, but on their wrongful conviction claims. I moved to West Virginia in 2012 to found and direct the West Virginia Innocence Project. The book tells some of these stories.

Finally, I'm a queer woman, married to another woman. I have a particular interest in the wrongful convictions of queer people and of marginalized women. These are the people I have represented as an attorney and whose wrongful convictions I continue to research and bring attention to as a scholar.

The key story in my book is about Leigh Stubbs and Tami Vance, two queer women who were wrongfully convicted. The happy ending of the book is that Leigh and Tami are reunited with their families after ten years of being incarcerated. Their own wrongful conviction story began with three women meeting each other at a drug rehab facility in rural Mississippi. Two of those women, Leigh and Tami, fell in love. After they graduated from the drug rehab program and were packing to leave, the third woman they had become friends with, Kim, asked if she could accompany them. Kim wasn't doing as well and she hoped they would take her home. Leigh and Tami said yes.

Just over twenty-four hours later, Kim overdosed. Leigh and Tami called 911 and got her to the local county hospital in rural Mississippi, where Kim fell into a coma. The emergency room doctor suspected that Kim may have been sexually assaulted, and informed the police. The police then called in a dentist—yes, a dentist—to examine Kim's body for evidence of sexual assault.

This dentist, Michael West, arrived at the hospital and examined Kim's body while Kim was in a coma. Kim was unconscious and completely naked while Dr. West examined, touched, and video-recorded Kim's entire body. Dr. West concluded that half of Kim's labia had been bitten off. And if you heard me, you heard me correctly.

Who could have done this—except for the “deviant” lesbians Kim had been with? That's how the assault charge against Leigh and Tami started and ultimately ended in their wrongful convictions.

In general, women are more likely than men to be convicted where no crime occurred. In this case, there was no bite mark, and Kim's labia had not been bitten off—that crime did not exist. According to the National Registry of Exonerations, seventy-four percent of women exonerees were wrongly convicted where no crime occurred.<sup>2</sup> One example of a no-crime wrongful conviction would be a fire caused by a malfunctioning space heater. A prosecutor alleges the fire instead was started by a woman; the prosecutor brings charges and successfully convicts her of arson and murder.<sup>3</sup>

Faulty forensic evidence, like our example of faulty fire science evidence, is a major contributor to these types of wrongful convictions. Frequently, where a woman is a caretaker, these wrongful convictions also involve child death or child assault charges. Take, for example, the San Antonio Four: four lesbians in San Antonio, three of whom were Latina.<sup>4</sup> The women were charged with sexual assault of a child that the prosecution alleged was part of a satanic ritual. Their case was just one of many “Satanic Panic” wrongful convictions in the 1980s and 1990s where faulty scientific evidence was presented to convince the

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<sup>2</sup> Kaitlin Jackson et al., *Female Exonerees: Trends and Patterns*, THE NATIONAL REGISTRY OF EXONERATIONS (September 27, 2014), <https://www.law.umich.edu/special/exoneration/Pages/Features.Female.Exonerees.aspx> [<https://perma.cc/83BA-XP2N>]; Catherine Grosso, *Female Exonerees Data*, THE NATIONAL REGISTRY OF EXONERATIONS, (April 11, 2022) (unpublished data) (on file with the Columbia Journal of Gender & Law).

<sup>3</sup> See, e.g., Rob Warden, *Kristine Bunch*, THE NATIONAL REGISTRY OF EXONERATIONS (Jan. 4, 2021), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4085> [<https://perma.cc/P3WJ-Y543>] (documenting a similar case of a mother convicted of setting a fire to murder her three-year-old child based on false fire science evidence).

<sup>4</sup> See Maurice Possley, *Elizabeth Ramirez*, THE NATIONAL REGISTRY OF EXONERATIONS (Oct. 31, 2017), <https://www.law.umich.edu/special/exoneration/pages/casedetail.aspx?caseid=5048> [<https://perma.cc/G2C5-3NQ2>] (detailing the wrongful convictions of the members of the “San Antonio Four”).

jury that the assault had occurred. The San Antonio Four were, thankfully, exonerated a few years ago.<sup>5</sup>

I also want to share, because of this post-*Dobbs* moment we are in, that prosecutors have charged miscarriages and stillbirths as homicide.<sup>6</sup> I anticipate not only that this practice will continue, but that more people will be charged. These cases often rely on faulty scientific evidence.<sup>7</sup> One example is the “Floating Lung” test from the Middle Ages where the lung of a stillborn is put in water to see if it floats.

According to the test, if the lung floats, then that being took its first breath and was born alive. With that “evidence,” prosecutors charge the pregnant person with homicide, instead of acknowledging a stillbirth or a miscarriage. That Middle Ages test is completely debunked, and sadly leads to many false positives, since it is most likely that the lung will float—and yet the test is still used to wrongly prosecute and convict people.<sup>8</sup>

Leigh and Tami were convicted because of faulty forensic evidence and homophobic testimony. We see this character assassination with queer people on trial, where prosecutors exploit biases that LGBTQ+ people are deviant, that they are depraved, and that they are dangerous. Here’s the expert testimony against Leigh and Tami from their trial—*expert testimony*. The expert was the dentist, Dr. West, mentioned earlier.

Prosecutor: So, in . . . a homosexual rape case, you would expect to find bite marks, it would not be unusual at all to find bite marks on the skin?

Dr. West: No, it wouldn’t be unusual.

Prosecutor: In fact, it would almost be expected?

Dr. West: Almost.<sup>9</sup>

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<sup>5</sup> Beety, *supra* note 1, at 96–97.

<sup>6</sup> See Valena E. Beety & Jennifer D. Oliva, *Policing Pregnancy “Crimes,”* 98 N.Y.U. L. REV. ONLINE 29, 46 (2023), <https://www.nyulawreview.org/wp-content/uploads/2023/03/NYULawReview-Volume98-OlivaBeety.pdf> [<https://perma.cc/9CSK-HULW>].

<sup>7</sup> *See id.*

<sup>8</sup> *Id.* at 49.

<sup>9</sup> Beety, *supra* note 1, at 117.

Dr. West then testified that the bite marks indicated a “combative or a sexual orientation phenomenon.”<sup>10</sup> He’s the only expert, he’s the one saying there are bite marks, and that the bite marks show that lesbians did the biting. It’s circular reasoning. All the evidence that the state has, is him.

The defense also had an expert, a forensic pathologist. Here is his surprising testimony:

Prosecutor: Would you expect to find biting or would biting be consistent with a lesbian rape type situation?

Expert: Yes ... homosexual crimes . . . are very sadistic. The more violent crimes I’ve seen in my experience are homosexual to homosexual. They do what we call overkill.

They do tremendous damage, tremendous damage. They’re more gory, the most repulsive crimes I’ve ever seen were homosexual to homosexual.<sup>11</sup>

There were no objections to any of this testimony.

The prosecutor’s closing argument was that the bite marks indicated that this was a homosexual assault—and these two women are gay.<sup>12</sup>

I also want to point out some of the language used against transgender people and gender nonconforming individuals. Here is the case of Darnell Wilson. I do not know how Wilson specifically identifies or what name Wilson chooses to use, but that is the case name and we know case names are frequently dead names.

Wilson is serving a life sentence for stealing bras from Kohl’s. Mississippi is a “Three-Strikes Law” state.<sup>13</sup> This was Wilson’s third offense and the

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<sup>10</sup> *Id.* at 124.

<sup>11</sup> Beety, *supra* note 1, at 148.

<sup>12</sup> *Id.* at 153 (“When you look at all the evidence, you’ll realize that while it’s a circumstantial evidence case, these two women who were living together, were lovers, whether because of the drugs or the alcohol or their lifestyle, they viciously attacked Kimberly Williams for no reason and tried to cover it up.”).

prosecution alleged that the amount stolen was over \$500, making it a felony charge. At trial, Wilson took the witness stand. These are the questions from the prosecutor:

Prosecutor: So you've got in your hand here a purple and beige bra, right?

Wilson: I'm sure it is a bra. It looks like one.

Prosecutor: Was that for you?

Wilson: I have one, and I will wear one again.

Prosecutor: You wear bras?

Wilson: Yes, I do, of course.

Prosecutor: So you're saying you dress up like a—are you a man or a woman?

Wilson: A female impersonated, transsexual, transgender, homosexual, all of that. And excellent at what I do.

Prosecutor: . . . May I ask you a question, Mr. Wilson?

Wilson: You may.

Prosecutor: . . . Still doing the prostitution thing?<sup>14</sup>

This was a theft charge. Theft! These questions were beyond the pale—but there were no objections.

Wilson was convicted and sentenced to life in prison, where Wilson remains today.

These are some examples of character assassination. I want to make sure to touch on the intersectional biases that accompany the combination of race and

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<sup>13</sup> Three-strikes laws require a court to sentence a defendant to life in prison (or extended time) for a third felony conviction. See Cassia Spohn, *Reforming Sentencing Policies and Practices in Arizona*, 52 ARIZ. ST. L.J. 1021, 1030 (2020).

<sup>14</sup> Beety, *supra* note 1, at 185–87.

marginalized genders. One study shows high lifetime incarceration rates for BIPOC transgender individuals.<sup>15</sup>

This brings me to the title of my book and the point of my book, which is that courts should be evaluating post-conviction cases for whether there was a manifest injustice or a miscarriage of justice. Currently, courts dismiss individual claims as harmless error. They're looking for whether there is DNA evidence, or other proof of factual innocence. Is there that DNA "golden ticket" that's going to show that this conviction should be reversed? You have a police officer who lied on the stand? Harmless error. Separately, you have a prosecutor who didn't turn over exculpatory, material evidence? That's harmless error.

Right now, courts frequently fail to look at all of this evidence together. As we know, in many cases, innocent women and queer people are not going to have that DNA evidence to show someone else committed the crime because they are "no crime" wrongful convictions. Instead, looking at all of the evidence together is really crucial for these individuals.

This also goes beyond proving factual innocence. The proposal in my book is that courts can and should review the totality of the case. They should look holistically at all the evidence together to evaluate if a conviction is a miscarriage of justice. I argue that convictions tied to bias, police and prosecutor misconduct, and false evidence are a manifest injustice, and that these should be claims that are brought to court.

You can imagine that a claim of gender or racial bias on its own might be dismissed as harmless error.

That it would not be enough to reverse the conviction. But if the courts look at everything together, then the question becomes "should we uphold this conviction?" The question is not whether the person has proven their innocence, but rather, should this conviction be upheld. Is this conviction just? Reliable?

Some state courts—Massachusetts, Kentucky, Illinois—have adopted this miscarriage of justice review, looking at all the errors and evidence together.<sup>16</sup>

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<sup>15</sup> JAIME M. GRANT ET AL., NATIONAL CENTER FOR TRANSGENDER EQUALITY AND NATIONAL GAY AND LESBIAN TASK FORCE, INJUSTICE AT EVERY TURN: A REPORT FOR THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 163 (2011).

<sup>16</sup> For more information, see VALENA BEETY ET AL., ACADEMY FOR JUSTICE, MISCARRIAGES OF JUSTICE: LITIGATING BEYOND FACTUAL INNOCENCE (2023), <https://academyforjustice.asu.edu/wp-content/uploads/2023/01/20230123-A4J-MoJ-Report-digital.pdf> [<https://perma.cc/D9HZ-E66F>].



At the federal level, the Court of Appeals for the Fourth Circuit and Court of Appeals for the Sixth Circuit have adopted an interpretation like this as well.<sup>17</sup>

I will leave you with a success story. It is also a tragedy, but ultimately it will hopefully help other people. It's about Frances Choy.

Frances was a high school senior in Brockton, Massachusetts when her house burned down. Her parents both died in the fire and their family home was destroyed. In one moment, Frances was left homeless and orphaned.

The police, however, didn't see Frances that way. They arrested her because they suspected that she had set the fire. Prosecutors charged Frances with arson and murder and took her to trial three times. At the first two trials, the jury could not agree on a verdict. The third time, the prosecutors finally got a conviction—the jury found Frances guilty and the court sentenced her to life in prison.

Post-conviction, Frances's attorneys brought fourteen different claims. They brought a claim of faulty forensic evidence, arguing that the fire science was unreliable.<sup>18</sup> They also raised prosecutorial misconduct and race and gender discrimination claims. In 2020, a Massachusetts judge reversed Frances's conviction based on a confluence of errors and a substantial risk of a miscarriage of justice.

This is a quote from one of Frances's attorneys, Sharon Beckman, who directs the Boston College Innocence Project:

“It's clear to me that how she was wrongly convicted was a combination of racism, race and gender stereotypes, and a complete dehumanization of her ... It's clear that an essential ingredient of the wrongful conviction of women is to dehumanize them.”<sup>19</sup>

I hope this has been a helpful overview. I'm going to take one more minute to show you a couple of examples of bite marks.<sup>20</sup> How many people have seen bite marks and bite mark evidence? These are images of actual bite marks, as the first controversy is whether it is actually a bite mark. Then, if it is a bite

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<sup>17</sup> *Id.* at 75.

<sup>18</sup> See, e.g., Valena E. Beety & Jennifer D. Oliva, *Evidence on Fire*, 97 N. C. L. REV. 483 (2019) (describing errors in fire science, and their contribution to wrongful convictions).

<sup>19</sup> Beety, *supra* note 1, at 51.

<sup>20</sup> See Appendix p. 149; The provided images of bite marks are courtesy of Dr. Mike Bowers, Herman Ostrow School of Dentistry, University of Southern California.

mark, was it by a human or an animal? And if human, then was it by this particular person? These are actual bite marks and you'll see a lot of them are on children, from being bitten by other children. Here's a relatively clear bite mark. Next to it on the slide, you see three different dental molds—three different dental impressions from three different people. Which one of these matches the bite mark? The answer is usually the suspect's, because the reviewer already thinks it's going to be the suspect.

Thank you.

SUSAN STURM:

Hi, everybody. It's great to have an opportunity to read this book, to be on a panel with my dear colleague Amber, and to see people who I get to see Tuesday, Wednesday, and Thursday mornings, gathered here to talk about *Manifesting Justice*. I can't help but say that. You know, that picture of Sharon Beckman that we just saw, there are only two degrees of separation. Sharon Beckman was a paralegal in the first post-clerkship job that I had in Massachusetts, then she swam the English Channel, went to law school, and is now doing this amazing work at Boston College. So who knows what's ahead of you. It's all really connected.

Valena, I'm so grateful for the work that you do and it's really such important work. I want to zoom out a little bit to think about this from the vantage point of the Innocence Movement and the larger challenges facing those of us, many of us, concerned about mass incarceration.

I want to make three points. The first point is courage, Valena's courage. An important move that I think is reflected in the book, is that Valena started out as a prosecutor who could have been in the book *Usual Cruelty* about people who become inured to the system because they believe in it, because they think it's right. And then something happens. This is a story about how many people, particularly those of us white people, want to do good. And we don't actually know what we don't know. We don't know the experiences of people who are part of the communities that we are going to descend upon and "transform."

There's a valuable process of actually sharing our own coming to awareness. But in a way that isn't just about "I want to apologize," but that's really about "What do I do now?" Now that I see where I was complicit in this system and I see where the system is really problematic. Now, how do I step in in a different way? How do I step in in a way that will enable me to collaborate with and work with those who understand what's actually happening in the system? That's the first move that I think is really important and something that

we can learn so much from. For those of you who are interested, I was never a prosecutor, but I certainly have my own versions of Valena's experience.

The second move made by the book is questioning how the Innocence Movement can become a driver of transformation, of a just system? As opposed to just being a kind of release valve—saying we're getting it wrong in a few cases, we need to fix those cases, and then the system will be restored to justice. Valena is very aware of this question and raises it in the book. The Innocence Movement can be a prop for an unjust system, if we think that we just need to fix the ways in which the bad people are misbehaving. You know, get those dentists—I'm married to a dentist, but get those forensic dentists—out of the system and then we'll be fine. And then there are those bad people who deserve to go to the prisons we currently have and to be incarcerated in cages in the way we currently do. And as long as we get the innocent people out, we've done what we need to do to restore justice.

Valena is absolutely clear, that's not what the project is. But I think there is that risk. We see this not only with the Innocence Movement, but also with restorative justice. Restorative justice is only for nonviolent offenders and for people who did those drug offenses that all of us do, but not for people who committed violent crimes.

This is a real problem with the way our discourse is proceeding. I think that the Innocence Movement is both a collaborator in that, and also at the leading edge of transforming that, in a way this book illustrates.

To me, the key question is—how do we work with a system or within a system that is itself part of the problem? It's a paradox, right? How do we do that? How do we think about innocence advocacy as the miner's canary for a system that has to be fundamentally transformed? We saw a lot of evidence of that in the book. What is it that enables a prosecutor to pick winning over actually figuring out whether a crime was committed by this person—or even at all? What are the incentives that are built into a system that's designed to deal with a whole series of societal failures through the lens of punishment? How do we do what we need to do in the short run, namely exonerate people who in this unjust system should not be incarcerated, but do that in a way that is the miner's canary to this broader set of questions? It's challenging because we so much want to focus on innocence. We want to be innocent. We don't want to be complicit. I think the Innocence Movement is a really important driver of making sure that we don't head in one of these directions rather than the other.

I'll say one last thing and then turn it over to Amber. How do we do this? If there's one thing that I learned is most important, it's that we cannot do this without having the people who are directly impacted by incarceration at the

center, driving the way we do this work. I mean this at every part of what we do, including legal representation. We should have people who have been through the system in law schools, teaching us, and working with lawyers who've never had the experiences of the people who went through the process. We need them to work with us so that we don't think we know. This can disrupt the system that currently exists. We see this with participatory defense, with bail funds, with court observation, but also with building a system that is just. It has to happen outside of the current system, but in ways that we who are in the system have to be part of, because we have to get out of the way. The prosecutors have to be willing to say, "I am not going to grab this person and put them into the system." It's a different way of thinking about our roles and what we're doing to solve this. It's acknowledging that we're going to figure this out by creating the space for those who actually understand the way these systems operate to be in the position to actually drive change.

AMBER BAYLOR:

Hi, everyone. A lot of my comments are framed as questions, so we're going to "talk show" this portion and I'll ask for feedback to some of the pressing questions. But first, I'll give you all a sense of what scenario I'm describing that was a part of this book, offer my reflections, and then present some concrete questions.

To start out, for those of you who haven't read the book, Valena has meaningfully interwoven this story of injustice with her own career path and development as a lawyer. In many ways, that required a lot of vulnerability. And as Susan said, a lot of courage. Because Valena modeled this vulnerability, a lot of my questions are my own reflections based on the events that occurred in this book. I was in a different position in the courtroom; my background is as a defense attorney. My questions center on lawyering, Valena's decisions to describe her journey, the exceptional position of innocence, and the types of physical invasions that are described in the book and their connection to *Dobbs*.

Valena, my first question is about your professional role and how lawyers and advocates doing their best can fall into traps of disempowered advocacy. You describe this in your journey from two ends. First, as a savior complex, where in reality you may not be hearing or listening or reaching the goals of the person who you're purporting to save. And then at the other end, a sort of desensitization or normalization and how that's happening not just from your position, but for lawyers across the courtroom, including judges, and, to a lesser extent, defense attorneys. This is happening across the courtroom for people who are advocates in that space.

I want to point to a section in the book that, for me, really highlighted what this advocacy is—what an advocate might do that is intended to be on behalf of their client, but that has actually disempowered their client in a way. I thought that, from the narrative of innocence, it's sometimes easier to do this from the perspective of the prosecutor. In this book, however, you also describe defense attorneys and, in fact, a defense witness, who have had harmful impacts on the case. As a part of this story, Leigh's attorney comes in with no time to prepare the case. They've requested an adjournment which the judge refused. Leigh is searching for a lawyer who will take a serious sex crime charge to trial in a week's time. So this attorney comes in and is trying.

There's an account of the things that he's trying to do, the obstacles that he's facing, and that he is actually the person within the courtroom who voices what's happening in this prosecution. At closing arguments, he says, "don't be baited by these things like gender bias, anti-LGBTQ bias that the prosecution is trying to pull you into." He says that aloud. Then he dials back and says, "but they haven't proven that my client is a part of that community anyway."

We know why the attorney did that. They're fearful that they haven't dissuaded the jury from their biases. But at the same time, I think the book centers us to Leigh's experience and thinking about what that sounds like—to hear that dialing back when a different story could have been told.

The story that's told in this book is actually a story of care. It's a story of people who cared for each other enough to call an ambulance, to check up on each other in the hospital, who faced discrimination, and bound together. Part of the check in that story is the reflection on our own roles as lawyers, even when we are the scrappy attorney or the attorney who's trying to do the right thing.

My question for you, Valena, is about your decision to incorporate and share your own journey and evolution from what you described as the savior complex to having the insights that you now have. How is that important to the goals of this book for people who are contemplating innocence cases for the first time, or for people who are students of the law or practicing in the law?

VALENA BEETY:

Thank you for that beautiful framing of that part of the book and some of the goals of the book in general. The Innocence Movement, and I think a lot of nonprofit lawyering as well, but the Innocence Movement in particular, is predominantly white people, overwhelmingly white people. I think this savior complex is part of it. It falls into that trap of "we're only representing the perfect clients" and "we're only representing the perfect people who don't deserve to be incarcerated in this way." As Susan was saying, then who deserves to be

incarcerated in these ways? Who is that helping, to be sectioning out only a very small group of people for any relief? We are taking pride in only representing that small population, of not engaging with the problems of the entire system and the problems of people who are incarcerated more broadly. There is this push to whitewash whatever issues your client has, to frame them as a perfect client, a perfect person who's deserving of this Hail Mary, long shot of getting their conviction reversed. And that framing is detrimental. I think it's easy to fall into, but it's detrimental to reform within our system. It's detrimental to changing our system and looking at alternatives.

I was part of that mindset as well, and I wanted to share that in this book. Our careers and paths are a process of learning, of learning from other people, and connecting with other people. When we start to stagnate—like Susan was saying, when you're a prosecutor, if you start to just immunize yourself from the real horrors of what's happening around you—then that's when you start to fall into these traps and fail at trying to change our system. It's important that it's not the lawyers and saviors who are centered, but the people who are experiencing incarceration themselves.

I'll just say one more thing: there continues to be a big push for defendants, and also attorneys, to pass in courtrooms in a number of ways. For example, for queer people to pass as straight. Instead of actually talking with Leigh and Tami and grappling with how queer bias could be used against them, the assumption by their attorneys was that they would pass. That was a failing.

AMBER BAYLOR:

I'll jump to a question that might resonate with *Dobbs*. You talk a lot about the system's invasions and control over bodies. As you mentioned, there was this investigation on an unconscious woman that was highly invasive. But you also give other examples, that there's a spectrum of physical invasions that occur.

At the far end, you describe in the book a compassionate release claim for two sisters, two Black women who were incarcerated for a minor charge—decades of incarceration for a very minor charge. One sister had a kidney failure, which was the basis of the request for relief. Both women were granted compassionate release, but the other sister must give her a kidney as a part of the terms of that release.<sup>21</sup>

That is an extreme example, but it resonates throughout the book. And then you talk about searches, cavity searches, which are routinely done, in front of an

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<sup>21</sup> Beety, *supra* note 1, at 172–73.

audience even. And then stretching it to lesser invasions, things like stop-and-frisk and control of where people are and where they live. That has an obvious resonance with *Dobbs*. What intersections or common threads are there? And what is it about?

What is it about these searches that is similar to a moral indictment? What part of the system are you trying to highlight by describing these types of invasions?

VALENA BEETY:

Thank you. I do spend time talking about how women's bodies, and particularly Black women's bodies, are, and have been, historically controlled and policed. And how the science of gynecology was developed on the bodies of enslaved women and Irish immigrant women for the benefit of many other people.<sup>22</sup> I trace this history, and while I may use Kim as a centering point—that she overdosed, is unconscious in the hospital, and then a stranger is able to come video, touch, and analyze her naked body—it exists throughout the book for many other people, and particularly for incarcerated people. We have a rape culture pervasive within our prisons. This is inherent in, as Amber is very well aware, being able to see your family members and your attorney. If you're incarcerated, being completely strip searched is inherent to your incarceration. It's seen as a privilege to be treated humanely, to be able to see your family members. That is part and parcel of the trauma of prisons. That does not stop these cycles of violence. My goal in becoming a prosecutor was to stop cycles of violence. And instead, in my view, our prisons—and particularly the rape culture in our prisons—perpetuate the trauma and the violence.

Amber, do you have anything to share from your own experiences representing women in particular, and people in general?

AMBER BAYLOR:

Yes. You give examples of clearly harmful prison practices. But I think that they're also tied, connected, and have the same line of reasoning about the value of human lives and controlling functions as operations that happen outside of prisons as well. For instance, in misdemeanor policing and regulation.

Yes, the intensity is different. The amount of autonomy over yourself is different and has its own levels and implications. But that control and the desire to control the body is something that we see in our misdemeanor cases. People in this room might have experienced this in their own lives as well. So, when

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<sup>22</sup> See generally Deirdre Cooper-Owens, *MEDICAL BONDAGE: RACE, GENDER, AND THE ORIGINS OF AMERICAN GYNECOLOGY* (U. of Ga. Press, 2017).

you talk about it being part and parcel of the system, that matches my experiences professionally and otherwise.

VALENA BEETY:

And particularly misdemeanors, which do seem to be predominantly about control. Every single one of us in this room has probably committed some form of misdemeanor, whether we know it or not. Have we been arrested? Have we been charged? Have we been convicted? The people who are arrested and charged and convicted, it's often because there is an effort to control those individuals, to control certain communities.

AMBER BAYLOR:

And to imbue in people a sense of being watched and regulated. That deeply impacts our experiences of space, safety, freedom, and autonomy. One thing that surprises many clinic students going to arraignments in court—including Black and Brown students, students invested in critical examination of criminal law systems—is the blatant operation of criminal law on our communities. And this applies in all of the places I've taught. The blatantness is almost offensive—you go to court and see only, or nearly only, Black and Brown people waiting to see the judge or shackled and brought before the judge. That our communities are targeted is undeniable. That's the takeaway from being in arraignment court where the system is on display, it's undeniable.

Students of our legal systems should know what's happening in our courts. And if it feels too voyeuristic to go watch court alone, there are organizations with court-watching missions. Here and elsewhere, there are also opportunities to listen closely to the experiences of people who are most affected by the criminal law system. They may be family members, they may be classmates, members or guests of the Law School, or your own interactions. Let yourself be activated by it.

VALENA BEETY:

That's so important. And just as many law students will never sit in a criminal courtroom, many prosecutors and judges will never see the inside of a prison. They advocate for and sentence people to incarceration, and yet they have never stepped inside a place of permanent detention. That allowed, and even encouraged, dissociation is part of the problem.

Thank you for this discussion. Do you have any final thoughts as we wrap up?



AMBER BAYLOR:

Yes. For anyone reading this book, *Manifesting Justice*, use it to think about what motivates you. You will find the law there, you will find the resources there. And hopefully you will find your community—similarly interested people, who are moved by things that move you. That's your starting place.

APPENDIX

