



**Judy Royal, JD: “Why Women’s Wrongful Convictions are Different”
Co-Director, Women’s Project of the Center on Wrongful Convictions**

A few months ago, the Center on Wrongful Convictions launched a Women’s Project, which is the first project of its kind, devoted to studying and rectifying the wrongful convictions of women. Judy Royal, JD and Karen Daniel, JD are co-directors of this project

Why a Center for Wrongful Convictions of Women?

Why a women’s project? According to the National Registry of Exoneration (a joint project of U of Michigan and Northwestern Law Schools) only 72 out of the 1,062 documented exonerations in this country since 1989 were for women: which means that less than 7% of documented exonerations were for women’s cases. In 2004, 18% of persons convicted of felonies in state courts were women. Now, men’s convictions do greatly outnumber women’s convictions, but not by nearly this much. I don’t believe that only 72 innocent women were convicted since 1989, nor do I believe that the criminal justice system is more accurate for women than it is for men. So we need to address this disparity. What accounts for it? We suspect that one reason is that while many exonerations of men have come as a result of DNA testing, DNA very rarely proves a woman’s innocence – for reasons that should be obvious. To date, DNA evidence has contributed to 347 exonerations, but only 7% of them have been for women. So the great DNA revolution in criminal justice has not been a great help to women, and perhaps for this reason as well as other reasons, innocent women are underrepresented among the exonerated. But that means we have to focus elsewhere and we have to do better for innocent women behind bars.

The Center on Wrongful Convictions has represented four innocent women in the 13 years since we’ve been in existence. All four of those women were single mothers, convicted of murdering their children. None of them was psychologically disturbed, and not one of them had a motive to commit such a monstrous act. Yet all of them had to face criminal charges and then prison instead of being able to properly grieve for their children (the only thing worse than having your child murdered). All of them were lied to and aggressively interrogated by the police, and all of them, to one extent or another, had statements they made to police used against them either before trial or during trial. In actuality, two of the deaths of these children were accidental, and two were murders committed by someone else. There is a lot of research out there about interrogation practices and false confessions, but none specifically on whether women respond differently to police interrogation than men, especially when they are in shock over their child’s death. One of our missions is to promote and encourage research in areas involving women, and this is certainly one area that begs for scholarly inquiry.

Now of course, not every women’s case is like one of these, but the coincidence was striking, and it got us to thinking that perhaps the factors that lead to wrongful convictions are distributed differently in women’s cases than they are in men’s cases. And indeed, the preliminary data that we’ve looked at suggests just that. For instance, a greater percentage of women are convicted of harming children or loved ones than is true of the men’s wrongful convictions. A greater percentage of women’s cases involve false confessions than is true of men. A greater percentage of women are convicted in cases where no crime was committed at all – such as in the accidental death of a loved one.

One of the things that struck us is that there seems to be a lack of interest in whether there are differences in the wrongful convictions of women. The figures that I gave you previously about wrongfully convicted women who have been exonerated were taken from The National Registry of Exonerations. This registry provides detailed information about every known exoneration in the United States since 1989—cases in which a person was wrongly convicted of a crime and later cleared of all the charges. This registry was first published in 2012 and by looking through the case listings, we came up with the numbers we are using for women’s exonerations. We have found NO research looking at whether the causes of wrongful convictions are different for women. Maybe it exists but we have not found any. So one of our goals is to encourage research in these areas.

What are some of the causes of wrongful convictions in women?

- *21% of female exonerees were convicted of murdering their children or other loved ones*
- *Over 23% of female exonerees falsely confessed to a crime.*
- *In over 60% of female exonerees’ cases, no crime had occurred.*

Collaboration between the Center for Wrongful Convictions and medical experts

I think innocence projects could benefit from collaboration with the medical community. In the past decade, there have been a number of cases brought to the attention of innocence projects concerning allegations of shaken baby syndrome (SBS) or as it is sometimes now referred to as abusive head trauma. This refers to the two-part hypothesis that 1) one can reliably diagnose shaking or abuse from three internal findings (which experts refer to as the triad of symptoms: subdural hemorrhage, retinal hemorrhage and encephalopathy) and 2) that one can identify the perpetrator based on the onset of symptoms. In other words, the thinking was that the symptoms would onset immediately upon injury and therefore whoever was with the baby at the time the baby showed symptoms must have injured the baby.

I don’t think that anyone is arguing that babies are not sometimes horribly injured but there are what I would describe as two perspectives on SBS cases. One perspective is that over the past decade, thinking has evolved that this hypothesis fits poorly with the anatomy and physiology of the infant brain, that there are many natural and accidental causes for these findings, and that the onset of symptoms does not reliably indicate timing. Some doctors, such as Dr. Patrick Barnes, a pediatric neuro-radiologist from Stanford, now testify for defendants in some of these cases and raise such questions as: Did the baby have a preceding infection? Did it have any bleeding or clotting problems? Were there any problems, particularly with infants under 6 months old, at the time of birth? Dr. Barnes’ testified that his thinking on SBS has changed over the years and that in the past he would have considered the triad of symptoms to be evidence of abuse. Some doctors now believe that there can be a lucid interval, in other words, a period between injury and manifestation of symptoms.

As part of my work, I sometimes need to evaluate the cases of people who write us seeking legal representation. Although I am by no means a physician or scientist my work sometimes causes me to try to gain some knowledge in these types of medical/legal issues. In order to evaluate these claims, we can look at the victim’s medical records, which take a fair amount of effort to obtain and review, and our review is not exactly conclusive because we do not have medical training. If a case goes to trial, we can pay for expert witnesses to analyze them for us but that’s down the road. What would be really helpful would be if medical experts could agree on some guidelines for us to help us know which cases might involve innocence and which are highly suspicious. If doctors could come up with some guidelines, it could really help us figure out on which of these cases, if any, we might want to do full investigation. For example, when I was at the conference last year, a doctor from Children’s, Dr. Mary Clyde Pierce, did a lecture on which bruising characteristics discriminate abuse from accidental trauma in young children. This is the type of information that can be really helpful to attorneys because we don’t know this and it can give a very different perspective.