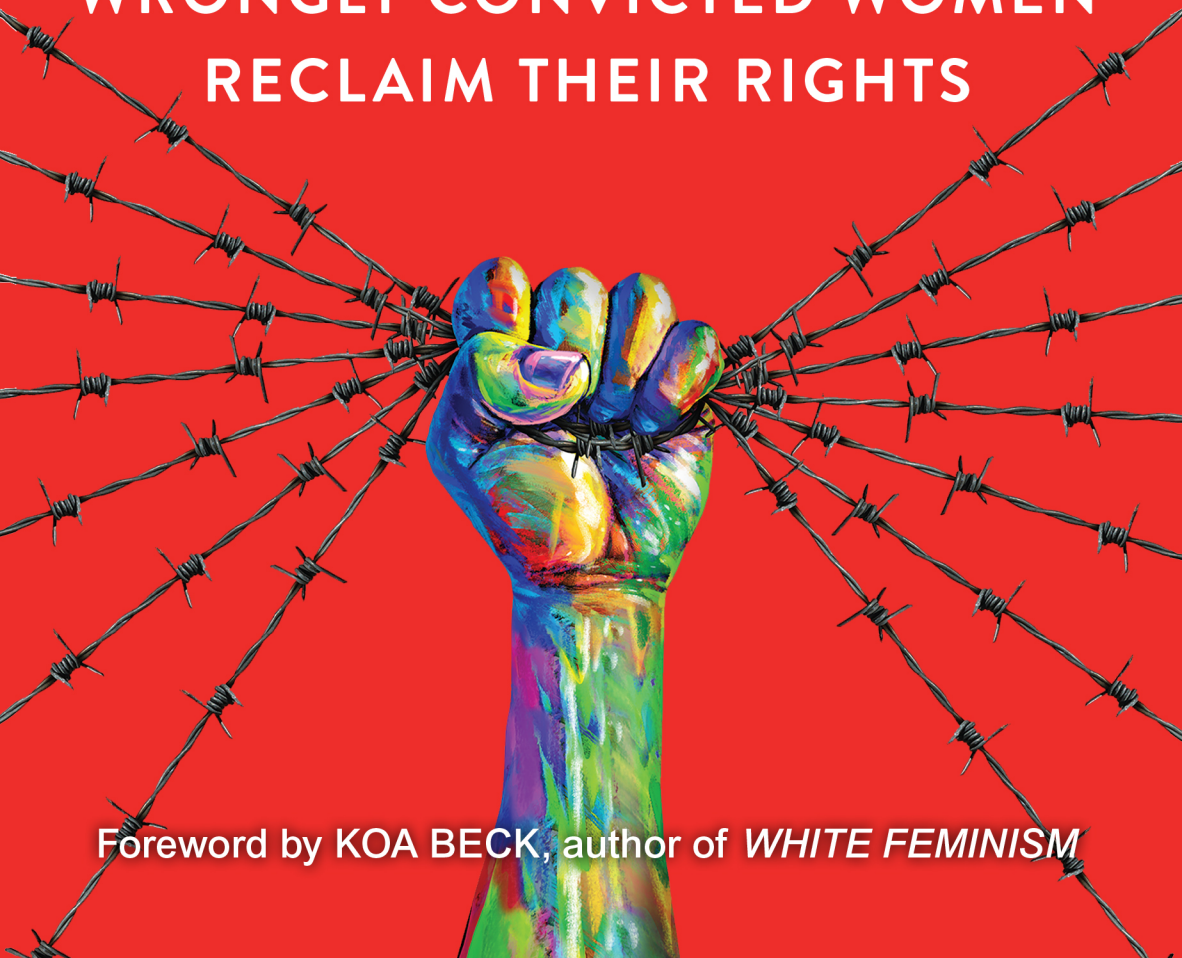


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# MANIFESTING JUSTICE

WRONGLY CONVICTED WOMEN  
RECLAIM THEIR RIGHTS



Foreword by KOA BECK, author of *WHITE FEMINISM*

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CITADEL PRESS

Kensington Publishing Corp.

[www.kensingtonbooks.com](http://www.kensingtonbooks.com)

## PROLOGUE

*The shortest distance between two strangers is the story.*

—Patti Digh

We view strangers with suspicion because we cannot predict what they will do. But when we hear their stories, we unearth what is hidden. We find ways to listen, to wait, and to grow intimate. With intimacy we can grow closer until we realize our stories are not so separate, but a part of a tapestry, our lives interwoven.

Though we are strangers, I encourage you to tell your story and to listen to this one.

The prison yard was unusually quiet when Leigh's friend collapsed. With a soft thud, her body crumpled onto the dirt, smearing red dust on her green-and-white-striped pants. These were not her clean pants, the ones kept fresh and bright for rare family visits. These pants were faded and frayed, marked with the stripes showing she had permission to be walking with a friend in the exercise yard of the Central Mississippi Correctional Facility for Women.

Leigh stood next to her comatose friend and yelled for help. She cupped her hands to amplify her voice and strained her eyes to identify approaching guards. Urgently, she called again. As the guards ran closer, she froze, so as to not pose a threat to them.

One guard pushed Leigh aside to try to minister to Leigh's friend. But another turned to her with rebuke.

"Leigh, why didn't you help her?" the guard demanded.

Leigh stared down at the unconscious woman, gripped by a powerful memory.

Then she turned and met the guard's eyes.

"Because the last time I tried to help someone in trouble, I ended up in prison for a crime I didn't commit."

This is a story about sexual shame. This is also a story about the War on Drugs, and trapping people in prison because of fear, misunderstanding, and hatred. But the root of it is shame.

It is also a story of change and how we can create justice.

Three women meet in a drug rehab institution. One experienced a tragic event in college months earlier. Trying to cope, she throws her personal and sexual vulnerability to the wind. The second woman is newly out of high school and struggling to figure out her sexual identity. The third woman is a lesbian, recently turned thirty, who has lived through homelessness and exile all the while questioning her purpose in the world. All three need help. And they find each other. Their relationships buoy them until the outside world shames them for their sexual choices, grasps at lies and stereotypes, and transforms them into victims and criminals.

This is their story.

I am an innocence litigator. For more than a decade, I have represented men and women who were factually innocent—serving time in prison for crimes they did not commit. Someone else had committed the crime, but police, prosecutors, and our courts had made a tragic mistake.

Over the past thirty years, innocence litigators have created a whole new field of law. With the advent of DNA evidence, these attorneys proved in court that their clients were factually innocent. They exposed serious failings in our criminal legal system, and they led legislative reforms in many states to prevent wrongful convictions.

In this book I offer a passport to this world, and a new expanded vision of wrongful convictions.

Some of my clients had DNA evidence that could prove they did not commit the crime. The evidence was either in a police storage locker or a courthouse evidence room. I needed the prosecutor's per-

mission to test the evidence. Every single prosecutor refused. I always offered to pay the DNA testing costs, but that wasn't what mattered to the prosecutor.

During those years, judges often told me their hands were tied, that there was no legal pathway to consider my client's plea for relief.

They were wrong; there is a legal pathway. It's called manifest injustice.

Manifest injustice is a legal mechanism to challenge and reverse convictions. It recognizes that convictions tied to racism, police and prosecutor misconduct, over-sentencing, and false evidence are wrongful. Manifest injustice—or miscarriage of justice—empowers a judge to consider the law, facts, and surrounding circumstances in a case and to declare a conviction, or a sentence, unjust.

Judges rarely use it.

In our criminal legal system, what qualifies as legal punishment can be a far cry from what is just. Judges infrequently reverse convictions.

The legal system prioritizes finality and prefers a simple contained narrative. The story is considered over once the person is convicted and labeled as guilty. To reverse that conviction, to free someone from prison, to be able to tell the full and complete story, is to overcome a legal bar that is dauntingly high, even for “perfect” defendants.

Our full stories reveal our motivations, our imperfections, and our humanity. My clients were not perfect, and like so many incarcerated people, they were survivors of crime and violence. My clients suffered in the same way that every incarcerated person suffers in prisons in America: over-arching violence, non-existent health care, token time with family, being caged in remote locations far from relatives with expensive phone bills widening that distance, and only small reprieves except escape through drugs.

Most of my clients did not have the DNA golden ticket to reverse their convictions and free them from prison. According to the prosecutors and judges, they didn't have enough proof to meet the very high standard of “innocence” that the current law demands. While locked in prison and unrepresented by counsel, my client may have filed five different petitions, each of which challenged a different evidentiary problem: the mistaken eyewitness, the police officer lying on the stand, the suppressed statement by a passerby to the crime.

The evidence issues presented across these petitions made it clear that my client had been wrongfully convicted, but courts do not review these errors collectively. Instead, they review the errors raised in each petition in piecemeal fashion. While this makes it much easier for the courts to rule out errors are “harmless,” it makes it exponentially more difficult for the incarcerated person to win freedom.

Taken singly, one by one, each error was insufficient to meet the burden on the client—which was now on me as their attorney—to reverse the conviction. Courts often simply refuse to consider the entirety of the errors that were committed, and the result is denial of relief.

The courts’ reliance on finality serves a purpose. Finality, enforced through an impossibly high standard to even revisit a conviction, insulates legal actors from reflection and reform. Finality is a shield, deflecting or burying criticisms of prosecutors, defense attorneys, judges, and police.

This dominant story of finality is the reason why the standard for reversing convictions must be manifest injustice. Courts should be obligated to review the picture as a whole to assess whether a trial was fair and just. The wrongs should be added up, rather than individually picked off and discarded as meaningless or as “harmless error.”

It is not just the factually innocent who are wrongly in prison. Forensic fraud, “testilying” police officers, prosecutors withholding exculpatory evidence, mistaken eyewitness identification, and false confessions lock away factually innocent people. But these systemic breakdowns also unjustly lock away far more people who are wrongfully convicted and sentenced, even if their factual innocence cannot be conclusively proven or their guilt is not in dispute.

Innocence work often promotes the concept of an “ideal client” with a sympathetic narrative and no prior convictions. The result, intended or not, is a perception that only near-perfect people imprisoned for crimes they did not commit deserve to have the innocence community fight for their freedom. But even with “ideal clients,” factual innocence may not be enough. Previously established facts are questioned or labeled fake news, not to mention disputed evidence or facts that simply remain unknown.

In a country that currently incarcerates 2.3 million people, proving factual innocence is also not enough to provide justice. Some innocence work has been co-opted by a denier's narrative, which contends that the vast majority of people who are arrested deserve prison and punishment.

The façade of the “always right” prosecutor should no longer be allowed to demand the conviction and incarceration of millions of people in the United States today.

These convictions can be reversed through manifest injustice. Manifest injustice is a tool that reaches beyond the perfect client who is demonstrably innocent. It can be an independent, fact-based claim for relief.

Through manifest injustice, courts can allow a defendant to withdraw their guilty plea after a conviction. Through manifest injustice, prosecutors can withdraw sentences they had advocated for and free the convicted person in prison, even years later. Through manifest injustice, bail requirements as well as sentencing guidelines can be more flexible. Courts can acknowledge over-incarceration and sentencing errors. Courts can recognize a confluence of errors in a case and their cumulative impact, even if each individual error does not rise to the legal standards created by previous court decisions.

The idea of manifest injustice challenges assumptions of what is natural and what is normal. Judges, lawyers, and civilians should not be accustomed to how our legal system quickly and routinely wrenches away peoples' freedom every day.

Manifest injustice is a correction when the law is too strict and leads to an unjust result. There are other tools that do the same thing—“dismissal in the interest of justice,” before a person is convicted, and “coram nobis,” after a person has served their sentence.

Before trial, fourteen states and Puerto Rico recognize a judge's authority to dismiss a criminal charge not on legal grounds, but in the interest of justice. Like manifest injustice, “dismissal in the interest of justice” allows a court to dismiss a procedurally proper but unjust charge pre-trial.

At the height of the AIDS health crisis in the 1990s, judges dismissed low-level charges against HIV-positive defendants in the interest of jus-

tice. Judges dismissed charges against ACT UP protesters—AIDS Coalition to Unleash Power—who organized “die-ins” and protested the government’s failure to support research and find a cure. Courts dismissed charges in the interest of justice to protect protesters and principles of free speech.

Coram nobis petitions can challenge a conviction even after the convicted person has served their sentence. Courts can grant coram nobis petitions “to maintain public confidence in the administration of justice,” reversing convictions for de-criminalized behavior, like marijuana possession, or where a “fundamental error” occurred.

In 2014, relatives of George Stinney filed a writ of coram nobis for his conviction to be reversed. The State of South Carolina convicted Stinney of murder in 1944, when Stinney was fourteen years old.

Stinney, a Black boy, was legally and factually innocent, but an all-white jury found him guilty after a one-day trial. The state of South Carolina executed Stinney in 1944, putting a Bible on the electric chair so the boy could fit into the straps.

In 2014, a court vacated Stinney’s conviction through coram nobis, recognizing a miscarriage of justice. Coram nobis petitions and manifest injustice claims are being successfully brought today, even when the harm is decades old.

Manifest injustice is a powerful tool that can have a wide-ranging impact and expand innocence work.

Manifest injustice may also be seen as disruptive of traditional innocence work and its cohesive theory of factual innocence. And it is. It is part of a growing movement that asks courts to liberate rather than incarcerate. It is an expansion and not a devaluation of the innocence movement and its global importance. We can celebrate the successes of innocence work, while also consciously discussing an expansion of innocence. We can apply the term “wrongfully convicted” to more people, as our society also begins to recognize criminal injustice more broadly. Manifest injustice is a new direction for growth and change, as a theory and a reality.

The innocence vision is powerful. And when we free wrongful convictions from the technical constraints of factual innocence, we can recognize and remedy miscarriages of justice.



Building awareness is how we turn from the “deserving” narrative of finality to a manifest injustice framework. Galileo said he wasn’t the first to discover the stars and planets, he was the first to see them for what they are. Manifest injustice is likewise a story of generational change: the origin of innocence work, the backlash of prosecutors adhering to a status quo, and a current move to reclaim the narrative of what is a wrongful conviction. Police, prosecutors, innocence deniers, and myriad structural system challenges stand as obstacles to freeing and vindicating people harmed by our criminal legal system. Manifest injustice creates a unique avenue to challenge prosecutorial misconduct, police abuse, and broader systemic racism.

The universal adoption of a manifest injustice standard would slow the churning machine of incarceration. Wrongful convictions are blazingly real and encompass a broad swath of people. Incarcerating people of color for decades to punish drug use is real. Women sentenced to a lifetime in prison for their connection to a boyfriend selling drugs is real. Imprisoning poor people for engaging in the same behavior as free, wealthy Americans is real. Convictions resulting from these injustices are wrongful.

The DNA revolution and innocence movement started more than thirty years ago, proving the reality of wrongful convictions in a way that courts and citizens have come to accept. But it is a narrow vision—too narrow to include the vast numbers of less than perfect, less than innocent people whose convictions are obtained through corruption, junk science, racism, and other legally dubious means. For the past twenty years, advocates in criminal justice reform have been arguing to broaden the innocence movement. This book acts as both a mirror and as a path forward from theory to reality. The widespread adoption of the existing tool of manifest injustice can expand innocence work to mitigate longstanding structural inequities rooted in our current system.

This book also provides other ways to manifest justice. When police and prosecutors criminalize transgender people, innocence litigators and activists can speak up about these wrongful arrests, charges, and convictions. When people of color are arrested and charged based on racism, state laws can require the charges be dismissed. When women

are over-sentenced for assaulting their rapist or abuser, people can advocate for clemency, for pardons. Many paths exist to manifest justice.

This book is about manifesting justice for people incarcerated too long, for women who took the fall for someone else, for people wrongfully convicted. And this book is about ways we are manifesting justice now.

Let's begin.