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## Through a New Lens

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*Child Protective Services*

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## Through a New Lens

### Cover Page Footnote

Art: "Untitled" by Elise J. Wright and "Catherine and Rebecca" by Alfred Dixon

## THROUGH A NEW LENS

by Wendi Cooper

On February 11, 1991, I was held hostage by a man armed with a knife, forced to perform oral sex and raped vaginally with such force that a spinal fusion implant partially dislodged. When my attacker agreed to release me after eight-and-a-half hours, he said, "I've been nice to you. I treated you nice. I just wanted to get to know you better."

Nice. I had been screaming for him to stop, "You're hurting me! My back! My back!" and he actually believed he had treated me nice.

Trembling with pain and shock, feeling terrified and violated, some instinct of self-preservation told me that night that my release depended on my affirming his delusion that he was my "friend."

My intuition paid off. When I asked for his name and phone number, he actually wrote it down. This key piece of information led to his arrest. It should have been an open and shut case.

Almost a year later, in December, 1991--just before the Christmas holiday--he was brought to trial and found "not guilty" by a jury that spent only 90 minutes in deliberation.

In an unexpected but kind and thoughtful gesture, the defense attorney approached me immediately after the trial and indicated he was incredulous at the outcome. He was apologetic and said in front of others that this verdict represented "a grave miscarriage of justice."

A year and a half after the rape, I am still piecing together the events that have left me twice violated.

\* \* \*

In January of 1991, I had been accepted into the M.B.A. program at Niagara University in Lewiston, New York. At forty-two years of age, with the loving

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support of my husband, Brian, and two children, I was embarking on a new direction to train for a job less physically demanding than that of a social worker in Child Protective Services. After a long period of recuperation from back surgery, it was exhilarating to attend my first class.

On the evening of February 11, 1991, I borrowed my father-in-law's car because mine was in the garage for repairs. His was a large, full-sized, older model Chevrolet, which I drove to school with extra care on this cold winter Monday. Since I was unfamiliar with the car and afraid the locks might freeze, I left the doors unlocked before I went to class.

A recurrence of back pain had necessitated a return to the use of my cane. Moving slowly as usual, I was the last person to leave class. It was a very long, windy walk to the parking lot. I was weighted down with my big briefcase and had to struggle with my cane. By the time I got to the parking lot, my car was almost the last one left. There was a young man standing close to the passenger's side of my car. Nobody else was around. I assumed he was just another student and would move out of the way when he heard the engine start. I didn't give him much thought before I entered the car.

I got into the driver's seat, fastened my seat belt and started the car. Suddenly, he opened the passenger door and swung into the front seat requesting "a ride home."

"No, I can't," I told him. "I'm going straight home by the lower bridge to Canada." He looked like a boy of less than 20, and he spoke in a low, non-threatening way, almost whining that it was cold and windy out. I felt sorry for him because of the cold. There was no security guard in sight, and I had no idea where the security building was located on campus. He assured me his home was "not far."

I became increasingly anxious when he began directing me to turn up and down streets we had already travelled. I angrily asked him, "Don't you know where you live?" My annoyance provoked a complete change of demeanor. He produced a long, thin, sharp-pointed knife, held it to my neck, and menacingly ordered: "Just drive where I tell you to."

The night of terror began.

Though I remember the gruesome details of that night and next day's ordeal with the police and hospital emergency room, I will only recount the facts essential to the case.

On Tuesday, February 12, after the rape, I was examined by an emergency room physician at St. Mary's Hospital in Lewiston. The doctor followed the standard emergency room "rape kit" protocol and recorded his observations of bruising and other evidence of forced penetration. A woman from the Niagara County Rape Crisis Center met me at the hospital and stayed with me while the police took my statement. (She was present during later meetings with the prosecuting Assistant District Attorney, and sat in on the entire trial.)

After the police took my statement, they seized for evidence all my clothing, my purse which contained every piece of personal identification I owned, and even the key to my office. These items were never returned although I was assured they would be. Before I could leave the hospital, my husband (who had brought me there), had to drive all the way back to Canada to get me a change of clothing. I went straight from St. Mary's Hospital to be examined by my own family doctor in Canada.

My father-in-law's car was impounded by the police for several days. In order to preserve any evidence in the vehicle, I was the only one allowed near it. On Wednesday, I had to drive it alone to the police station in Lewiston. That same day, I accompanied the two investigating officers in their police car to reconstruct Monday night's terrifying events. Starting at the University, I had to retrace the route taken on the night of the rape. Although we had driven for many hours through unfamiliar streets the night before, I managed to find the place where the rape had occurred.

On Friday, I returned to the police station and was able to complete a composite drawing and identify the attacker immediately from a series of photographs. The police investigators became excited and wanted to make an immediate arrest. When they telephoned the District Attorney's office with this information, the Assistant District Attorney (A.D.A.) said she wanted additional corroborating evidence first.

I was informed by the police investigator that the A.D.A. was insisting I make a tape-recorded call to the phone number my attacker had given me. The A.D.A. wanted me to get my attacker to talk about the rape by getting him to say that he had forced me to have oral sex and intercourse with him, that he had used a weapon to force me, and that he had been driving around

with me in my car all night. She also wanted me to arrange a meeting with him and get specific directions to a store he had stopped at before he released me. This conversation was to be taped. Naturally, my husband and I questioned why any of this was required. We were told that it was necessary to change a good case into an excellent one. I subsequently learned that there had been a big controversy about the taping issue. The police chief and other investigators had been against the process, feeling that the attacker should have been arrested immediately upon being identified.

On the same Friday that I identified my assailant, I attempted the first phone contact. Over the next four weeks, I made at least five unsuccessful calls from a police station at Lockport (one and a-half hours from home), which had the proper taping equipment. Someone always answered the phone, but my attacker was never home.

During the same period I was attempting telephone contact, the police also had me driving my father-in-law's car to the University every Monday evening for three successive weeks--as bait in case my assailant showed up again.

The police investigator, tired of driving me to Lockport, bought a \$3.00 microphone attachment for use at the Lewiston Station. On the sixth attempt at phone contact, on Thursday, March 7, I finally heard that feared voice on the other end of the telephone line. Despite acute anxiety, I was able to follow the A.D.A.'s script and obtain incriminating statements. Incredible though it may seem, because of the inadequate equipment, the entire conversation was inaudible on the tape. Yet, I was asked to decipher this tape and had to spend an entire day in what became a futile attempt.

The A.D.A. ordered another call to the perpetrator. This was again done in Lockport with professional recording equipment. Although this second taped conversation was audible, the attacker appeared wary, at times became argumentative, and revealed much less information than before. Nevertheless, he agreed to meet me and gave me explicit directions. The police were to pick him up at our arranged meeting place that Monday evening, March 11th, at 6:00 P.M. Neglecting to listen to the taped directions, the police went to the wrong convenience grocery store on the night we were to meet. The defense attorney later told the A.D.A. that the perpetrator had been waiting where he said he would.

Finally, the police arrested him at his home on March 12th, 1991 (which is what they wanted to do as soon as I had made a positive identification) and phoned

that evening to let me know that he was in jail. One week after his arrest I had to testify at the Grand Jury in Lockport, N.Y. My assailant was indicted on five charges: first degree sodomy, first degree rape, third degree robbery, criminal possession of a weapon, and second degree unlawful confinement. The defendant refused to plea bargain and the trial was set for November 12th--NINE months after the rape.

During this time, my back condition progressively worsened. Once the trial date was finally determined, my orthopedic surgeon scheduled me for December surgery to repair damage done to my spine. The trial date was rescheduled for December 16th, and I had to postpone the operation.

At my family doctor's insistence, I took April, May, and June off from work, received counselling at the Rape Crisis Services of Niagara County, and attended a weekly rape survivors group. I continued taking classes at Niagara University, feeling a little safer because my assailant was off the streets in jail awaiting trial.

Although I had not been looking forward to the trial, I started to see it as an opportunity to finally put the past year behind me. I began to feel I was getting my life back together. On October 22nd, I received a call from the A.D.A. who told me that the defense was trying to make an insanity plea which would make a trial unnecessary.

I received this news with mixed emotions. By the next day, I had resigned myself to the likelihood of not going to trial.

A meeting was scheduled with the A.D.A. for November 1st. The purpose of the meeting was to inform me that the trial was postponed until December 16th. My second and final meeting with the A.D.A. prior to trial took place on December 13th. The agenda for that meeting was purportedly to prepare my testimony and that of my husband. Most of that time, however, was taken up with a lengthy and heated argument on where I was to stay during the trial. The A.D.A. and my rape crisis counselor, who was present at this meeting, wanted me to stay at a women's shelter without my husband and family. This I refused to do.

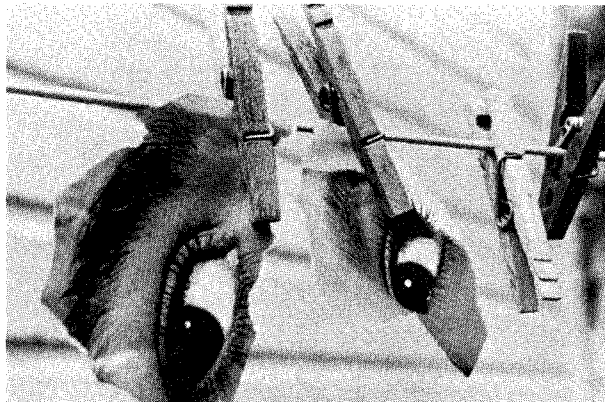
Instead, we compromised with me staying in a motel during the week and Brian commuting daily from home to Lockport. In addition, the A.D.A. directed my husband and me to stay out of the courtroom during the trial because we were both to be called as witnesses for the prosecution. We were also told we could not hear closing arguments to the jury under any conditions whatsoever.

Jury selection took place on Monday, December 16th. On the first day of testimony, Tuesday, the accused exhibited behavior sufficiently bizarre so as to warrant a competency hearing, which was held on Wednesday. He was, however, found competent to stand trial.

Although I was not allowed to be in the courtroom and it has not been possible to obtain a transcript of the proceedings to date, I have been informed of some of the testimony. It is evident that if additional witnesses had been called and if the prosecutor had prepared the witnesses more adequately, there is a strong likelihood that the verdict would have gone the other way.

There were no witnesses for the defense. The defendant himself never took the stand.

Witnesses for the prosecution included: the investigating police officer, the emergency room doctor and admitting nurse who had seen me at St. Mary's hospital in Lewiston the morning of the rape, the owner of a bar where the defendant had claimed to have met me, an evening student (a Canadian police officer by day) who had seen me at class on February



by Elise J. Wright

11th, my husband, and myself. Were my witnesses convincing to the jury? Evidently, they were not. According to the A.D.A. the investigating police officer, did a very poor job of testifying. Since I was not present in the court room, I do not know exactly what was said.

The emergency room physician was considered unqualified to supply relevant forensic evidence to substantiate the physical force of the rape because he was not a gynecologist. The A.D.A. had met with him for the first time that morning just prior to his testifying. Had an expert witness been called to testify about the

signs commonly associated with rape, then the examining physician's observations could have been corroborated and heard by the jury.

The bar owner disproved my assailant's defense that I had "picked him up" in a bar earlier that evening. He told the jury he had not seen either of us in his establishment that night and, in fact, the bar had closed early because the wintry weather had made business very slow.

My classmate's testimony was very limited. He told me he was not allowed to describe how I had been limping badly with a cane when he saw me at class that night.

My husband was allowed to testify that he had been terrified when I didn't return on time because he knew I would have called him to say I would be delayed if I were safe. He was further allowed to testify that he stayed up all night making calls to two police forces and numerous hospitals, and allowed to describe the helpless frustration he felt. When he talked about my arrival home at 7:45 A.M., he was not allowed to say anything about my state of shock or convey any of my words to him. He was only permitted to say that it was he who had phoned the State Police and had driven me to St. Mary's Hospital. Brian appeared very distraught when he returned to the waiting room after his testimony which only lasted approximately 30 minutes.

Through all these proceedings, my rape crisis counselor was allowed to sit in the courtroom while my husband and I were isolated in a small anteroom. My counselor offered me minimal feedback on the proceedings, preferring to expend her energies in running small personal errands for the A.D.A.

Just prior to my testimony, while walking to the courtroom, the A.D.A. told me that the two previous witnesses -- my fellow student and my husband -- had "done an awful job" and it was now all up to me.

My testimony was over in only two hours. I described the events of my abduction, rape, imprisonment and release. I was not questioned about the terror experienced during the hours of my captivity. I would have liked to tell the judge and jury more about the emotional and physical suffering that I endured during the 10 months following the rape--the physical and emotional results of the attack.

None of my own medical doctors were called as witnesses. They could have furnished evidence of changes in my physical and mental condition after the trauma. Testimony was not given that my back pain had

made it impossible for me to run from or struggle with my assailant.

Neither my counselor from the Rape Crisis Center nor any other expert in rape trauma was asked to testify. The jury never received information about how rape trauma is known to affect a victim's abilities to act during the abduction or to recall details of the trauma. Not a single question was asked of me by the A.D.A. to clarify my responses during cross examination by the defendant's attorney.

The judge dismissed the charges of "unlawful imprisonment" and "criminal possession of a weapon," ostensibly to make the jurors' job easier, because the charges were "redundant."

When the jury finished deliberating the three remaining charges, I was finally permitted in the courtroom. I sat rooted in horror as the verdict on each charge was read, certain that there must be some mistake, hoping that I would awake from this hideous nightmare. I felt certain that if I were hearing right, the judge would get up and tell the jury to review the evidence. **BUT NO, I WAS AWAKE AND I HAD JUST BEEN RAPED AGAIN!**

But there was a difference. The first time there was something I could do about it. I could notify the police; I could go to a hospital; I could believe the criminal would be found and justice would prevail. I could feel safe in the support of my family and friends who believed in me, and I could feel assured that my attacker would face the consequences of his crime.

But what could I do now? Hearing the words was like experiencing the death of someone, the horrible finality of something that could never come back to life. It was the death of my innocent belief that there was justice in the system, that if you did right, you would be protected from abuse. This verdict stole my belief in the inherent goodness of human beings. It represented the death of my children's innocence. Nothing could change it. Nothing in the system provided any redress whatsoever once the verdict had been read.

The verdict evidently was a shock to many people present in the courtroom. The A.D.A. told me that this was the strongest rape case she had ever prosecuted. I saw bailiffs crying. As I mentioned earlier, the defense attorney approached me immediately after the trial with kind words. Even the judge told me that he, too, was greatly disturbed by the jury's decision.

The A.D.A. spoke to the jury of nine men and three women immediately following the verdict. She learned that when the deliberations first began, eleven of

the jurors believed the defendant was guilty. Apparently one woman raised the specter of "reasonable doubt" by suggesting that the rape had somehow been consensual because I didn't try harder to escape. I have since learned that it is not uncommon for women jurors to avoid facing their own vulnerability by "blaming the victim." One juror told the A.D.A. that although he believed the defendant guilty to the end of deliberations, he was unaware of a single juror's ability to "hang the jury" and force a retrial. He told her they believed they all had to reach agreement in order to go home that day, which was the Friday before Christmas week.

It was also the same week after a jury found William Kennedy Smith "not guilty" of rape in the internationally publicized trial.

To what extent had misshapen attitudes on the part of the jury impaired its ability to make an objective decision based on the weight of factual evidence? How informed was the jury on the meaning of "reasonable doubt" by the judge in his instructions to them? Did they misunderstand why the judge dismissed the two charges as being "redundant?"

It took me many days to absorb the fact that I would not be going in front of the judge to deliver a victim's impact statement prior to the rapist's sentencing. I had been preparing myself for this proceeding for several weeks. I could not adjust my thinking to realize I was not considered "the victim" any longer. I was now "the accuser." I would not even be entitled to one of the few victim's rights' compensation for any of the loss I had suffered by a man who would now be back on the streets. I would not even be compensated for the soiling and taking of my clothes. Never in my life had I experienced such a paradox between inner rage and utter helplessness.

Where did the judicial process fail?

I believe there was a myriad of failures--by the police investigators, the prosecution, the judge, and by the rape crisis services. An unjust decision like this raises the question of whether these people were doing their jobs as well as they could or should have done.

How can we protect against human error when there is such potential for harm?

Who are the people to be held accountable when the system fails? Nothing was in place to prevent me from slipping through the cracks of the judicial system.

Although we have seen increased awareness about rape, we still lack a coordinated approach to adequately protect rape victims.

Rape victims' advocacy teams should be instituted to insure that victims receive the benefits of experts in psychology of rapists and victims, legal counsel sophisticated in rape law, and forensic experts who find and evaluate evidence. Every link in the investigation, prosecution, and trial must be tracked by this team with the best interest of the victim foremost in mind. If such a system had been in place a year ago, it is likely that the verdict in my case would have turned out differently and that the rapist would not be free to walk the streets today.

The rate of rape and attempted rape in the U.S. increased 59% in 1991 from 1990. It is estimated that at least one in four women will experience rape in her lifetime. Less than one in ten will report it, and of these only three percent will actually go to trial. With the number of rapes in the U.S. rising at four times the rate of other violent crimes, we cannot afford to lose a strong case like this one because of human or systemic errors.

\* \* \*

I can live with the knowledge that I did the right thing in reporting this crime. It is not on my conscience that a dangerous offender is still walking the street as a result of any fear or apathy on my part to come forward. I do fear for other women he may

attack because he was unjustly freed. I am experiencing great difficulty in living with the fact the criminal justice system failed me. It can only remain my hope that this experience will not have been entirely in vain. If this case can help heighten awareness to the seriousness of the violent sexual crimes and the need to address it properly within the judicial system, then perhaps justice will prevail after all.

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