



Jeff Deskovic

When Women Are Wrongfully Convicted, Part 2

Last week, in Part 1, I wrote about the subject of women being wrongfully convicted, hoping to raise awareness about the subject. I analyzed the cases, and spoke about some of the hardships that are peculiar to women when they are wrongfully imprisoned. In Part 2, it is my intention to explore a few more cases, in order to provide evidence that women are wrongfully convicted more often than most of us would believe.

Paula Gray

Paula Gray was wrongfully convicted of Murder, Rape, and Perjury in Illinois and served 9 years in prison before being exonerated in 2002. The facts of her case are taken from *The Center On Wrongful Conviction's* website:

"Paula Gray was the key figure in the prosecution of the men known as the Ford Heights Four, who were convicted of the 1978 abduction and murder of Lawrence Lionberg and Carol Schmal and the rape of Ms. Schmal. Gray and the men became suspects in the case after Cook County Sheriff's Police received a tip from Charles McCraney, a man who lived in a run-down public housing development in East Chicago Heights, a poor south suburb of Chicago. Based on McCraney's claim, police questioned Gray, who was only 17 and borderline mentally retarded, over two nights in motels before she confessed. Then she was taken before a grand jury, where she testified that she had been present when Kenneth Adams, Verneal Jimerson, Willie Rainge, and Dennis Williams repeatedly raped Ms. Schmal and then shot both victims to death.

Gray soon recanted her confession, which contained only two purported facts that were not known to the police — and both of those assertions ultimately were shown to have been false. Upon her recantation, however, Gray was charged both with the rape and murders and with perjury. She was tried simultaneously with Adams, Rainge, and

Williams in the same courtroom before the same judge, but by a separate jury. The charges against Jimerson could not be pursued at that time because without Gray's testimony there was no evidence against him. McCraney had not placed Jimerson at the scene. The convictions of the remaining defendants rested primarily on McCraney's testimony and the testimony of an informant, David Jackson, who falsely claimed to have heard Williams and Rainge talking in jail about how they committed the crime. Forensic evidence — later shown to have been false in one regard and unreliable in another — also was presented by the prosecution. Adams was sentenced to 75 years, Rainge to life, Williams to death, and Gray to 50 years for the murders and 10 years, concurrently, for perjury.

After Rainge and Williams, but not Adams, won new trials in 1982 based on ineffective assistance of counsel, Gray agreed to testify against them and Jimerson in exchange for her release from prison. Jimerson was then charged, convicted, and sentenced to death.

Although McCraney originally had not placed Jimerson at the scene, he did so at the trial. Rainge and Williams then were retried and convicted based on the false testimony of Gray and McCraney. Rainge was sentenced to life without parole, Williams to death. Jimerson's conviction was reversed in 1995 based on prosecutorial misconduct; the prosecutors had failed to correct perjury by Gray, who had falsely stated that she had been promised nothing in exchange for her testimony.

Now lacking credible evidence against Jimerson, the Cook County State's Attorney's Office agreed to DNA testing. Meanwhile, Northwestern University journalism students working under Professor David Proffess found a police file showing that, within a week of the crime, a witness had told the Sheriff's Police they had arrested the wrong men. The witness said he knew who committed the crime because

he heard shots, saw four men run away from the scene, and the next day saw them selling items taken from the robbery of the victims. As a result of police and prosecutorial misconduct, however, the report had not been turned over to the defense prior to trial as required by Brady v. Maryland, 373 US 83 (1963). One of the men identified by that witness was by then dead, but the other three ultimately confessed. Then the results of the DNA testing conclusively established the innocence of the Ford Heights Four and corroborated the confessions.

The Ford Heights Four then filed civil rights suits against the Cook County Sheriff's Police. Through the discovery process in that litigation, it became apparent that Gray's false confession had been coerced. The police misconduct prompted Cook County to settle the men's claims for \$36 million, the largest such settlement in U.S. history. In July 2001, Gray's conviction was thrown out with a lengthy opinion by Circuit Court Judge William D. O'Neal. The Cook County State's Attorney's Office appealed the ruling, but the appeal was rendered moot in November 2002 when Illinois Governor George H. Ryan granted her a pardon."

Marci Stein

Marci Stein was wrongfully convicted in 2001 of engaging in sexual relations with three teenage students in Westchester New York and served four years in prison before being freed.

Ms. Stein was a teacher at Hendrick Hudson High School in Montrose in 2000, when allegations surfaced that she had had sexual intercourse with a 16-year-old student and had performed oral sex on two other boys during tutoring sessions at her home between April 1999 and January 2000. She was found guilty of felony charges that included statutory rape, sodomy and sexual abuse.

Her conviction was overturned because then Westchester District Attorney Jeanine Pirro's office failed to turn over evidence to her lawyers of the fact

that two of the teenagers were seeking damages against the school district, which went to the matter of credibility, in that the witnesses had a motivation to a lie which Stein had the right to have the jury consider, because this went directly to the matter of guilt and innocence.

Speaking to the information's relevance, The Appellate Division wrote that the information was "highly relevant" to their credibility. In fact, the two students collected \$220,000 in a civil action against the school district. "The failure to turn over this evidence was aggravated by the prosecutor's argument during summation that there was no evidence that the complainants were bringing civil lawsuits as a result of the defendant's conduct. There is a reasonable probability that this failure to disclose affected the outcome of the trial."

Traumatized and unwilling to trust her fate to a jury system that had already wrongfully convicted her once, and desperate to regain her freedom and move on with her life, Stein pled guilty to endangering a child and was immediately released.

Gloria Killian

Gloria Killian was wrongfully convicted of murder and served 18 years in prison before being released in 2002. The facts of her case are taken from a March 2008 report by *Death Penalty Focus*, published on www.deathpenalty.org.

"In 1986, Gloria Killian was convicted of "master-minding" the 1981 first degree robbery-murder of Ed Davies and was sentenced to 32 years to life in prison. The district attorney intended to seek the death penalty for Killian — as he had successfully won a death sentence for her co-defendant Stephen DeSantis in 1983. But because of the California Supreme Court ruling in *Carlos v. Superior Court* the maximum sentence he could seek was 32 years to life. Carlos was reversed soon after Killian was sentenced.

The charges were based solely on the



testimony of career criminal Gary Masse, who had just been sentenced to life without possibility of parole for his role in the same murder-robbery. In a deal with the District Attorney, Masse named Killian as the mastermind of the robbery in exchange for a reduced sentence. The co-defendant, DeSantis, testified in his 1983 trial that Killian had nothing to do with the crime, and that he had never even met her. At Killian's trial, Masse denied making a deal with the District Attorney and the prosecutor reinforced Masse's untruthful testimony during his closing argument. Shortly after the trial, Masse wrote a letter to the prosecutor demanding that his sentence be reduced - as promised - because he had successfully lied for him. Masse then in fact had his sentence reduced from life without parole to life with the possibility of parole. The letter from Masse was never disclosed to the defense.

It was discovered years later by attorneys for DeSantis. In 2000, Masse admitted to federal magistrate Judge Gregory Hollows that he had lied during Killian's trial, but shortly thereafter Judge Hollows recommended to U.S. District Judge Garland E. Burrell that Killian's conviction be upheld; and Burrell agreed saying that the perjurious statements were harmless.

In 2002, the Ninth Circuit Court of Appeals reversed Killian's conviction saying that it was improperly based on the false testimony of Gary Masse. Ninth Circuit Judge Michael D. Hawkins called his testimony "thoroughly discredited." Killian was released in 2002 after serving over eighteen years - five of those years after the letter from Masse had been discovered."

Analysis Of The Wrongful Convictions

I prefer to review the causes of the wrongful conviction, as cases in point as to why we need legislation to prevent future wrongful convictions.

False confessions, which are far more common than people realize-being the cause of 25% of the now 218 DNA proven wrongful convictions, was the cause of Gray's wrongful conviction, as well as those of her co-defendants.

Prosecutorial Misconduct and the withholding of evidence favorable to the defense, in legal jargon referred to as *Brady* material, which often is related to guilt and innocence, again rears its ugly head in the Stein case. The habit of engaging in misconduct and withholding of

Brady material, has gone on in the Westchester District Attorney's office for quite a long time. I would like to know why prosecutor Laura Murphy, who withheld the evidence from Stein's Attorneys, and lied to the jury in her closing remarks, still remains employed as a prosecutor in the Westchester County District Attorney's Office. In any other line of work, an employee who was found to have broken the law while working at the job would have

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been fired. Why should their status as Officers Of The Court entitle them to different treatment? In my view, any district attorney looking to make a clean break with prosecutorial misconduct of the past would fire them based upon their proven conduct, due to their being unworthy of future public trust. This is no game; this is people's lives we are talking about here.

Of course, the Stein case is by no means the only instance of this type of lawbreaking, occurring in that Office. My sense of justice is offended, and I am still stunned, by the brazen withholding by former prosecutor Clement Patti of the 52 boxes of exculpatory evidence that was withheld from Anthony DiSimone's attorneys, showing that another person committed the stabbing murder for which he served seven years in prison. It is morally wrong that prosecutors such as these will get away with their crimes, as will other prosecutors who do this in the future, because there currently is no law allowing the prosecution of those who break the law and irreparably alter the lives of people as a result.

In the Killian case, we see that incentivized witnessing, which is when a person receives a reduced sentence or a reward in exchange for testimony against another person, is the cause of this wrongful conviction. As I have mentioned before, this has caused wrongful convictions in 15% of the now 218 DNA proven wrongful convictions. We also see just how slow the wheels of justice are to release people by her remaining in prison for five more years after the proof

that the witness was allowed to lie on the witness stand surfaced, and how often appeals are rubber stamp denied. What was the federal magistrate thinking who recommended that the withholding of the information was "harmless", not to mention the district judge who accepted this recommendation?

I really wish that federal judges would take a lesson from this case and please pay careful attention to the issues raised in front of them, and not simply find ways to uphold convictions by any means necessary.

Conclusion

These cases round out six that I have reviewed recently pertaining to incidents of women being wrongfully convicted. As mentioned above, I wrote this two-part series to illustrate that women are, in fact, wrongfully convicted. The words of Lynn DeJac, who served 12 ½ years, haunt my mind: "You know that I am not the only woman who has been wrongfully convicted. I am just one of the lucky ones."

Her point is that there are other women who have been wrongfully convicted,

whose cases we simply don't know about and may never know about, because they have not been cleared. Usually there is no DNA to test in cases where a woman is a defendant, and it is infinitely harder to prove innocence through other means, especially considering that it is difficult for the poor to obtain quality legal representation, given that public defenders are generally not that good, and that the number of attorneys willing to take cases for free is limited.

The women mentioned came from a variety of different backgrounds. Stein was a schoolteacher, Killian was a paralegal who was on her way to becoming an attorney, Gray was 17 and borderline retarded; Joyce Brown, whose case was covered in the previous issue of *The Guardian*, worked in a fur company; Ellen Reasonover was a would-be good Samaritan who reported possibly seeing the people who committed the murder that she was ultimately wrongfully convicted of; Betty Tyson was a prostitute. My point is that it can and does happen to women of all walks of life. There is no path of life that one can go down which will guarantee that this could never happen to you, regardless of your gender. ■

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