

Reflections of the Wrongly Convicted

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In our criminal justice system, you stand before the court in one of two ways: either guilty or innocent. You are innocent until proven guilty, or you are guilty until you prove your innocence. For me, the latter was true, as I was presumed guilty and had to prove my innocence.

Lawyers, especially public defenders, should have faith when their client tells them, "I didn't do this. My life is in your hands. Help me in any possible way you can. I will do anything you tell me to do. That is what I will do to help you prove my innocence." Additionally, a District Attorney (DA) should be concerned with finding truth and justice, rather than just winning cases and risking the conviction of an innocent person.

In late August of 1989, at approximately 11:00 P.M., I was walking with some friends from a club. I was a little intoxicated, and was being loud and having fun the way young people do. We got into a little scuffle, nothing major, but the police were there. They saw it, and they arrested all of us – my friends, three others, and myself. While at the police station, one of the police officers said to me, "You look like a rape suspect we are trying to find." At first, I thought he was joking, but the look on his face when he said, "Do I look like I'm joking?," brought tears to my eyes and I knew this was no joke. I have always tried to claim that I was a tough guy. I was young, only twenty-three years old with few worries, but the look on his face scared me, and I cried. I told him, "Wait a minute, hold on, you really have to be kidding me. My name is Neil J. Miller, go look it up. Stop playing." He went and looked it up. He said, "Yep, you're the one we're looking for." I exclaimed, "Hold up, hold up, hold up! I can give you dates for each and every time in question and can tell you where I've been, and I have people who can verify this." He said, "Well, you'll get your time, but right now, you're being charged with rape."

I have four sisters, a number of aunts and cousins; in fact, eighty-five percent of my family are females. I love them all dearly, have great respect for them and all women, and was completely mortified that I was actually being accused of rape.

At my trial, I listened to the District Attorney make me out to be an ugly monster. I listened to the victim. I held back my tears because I was thinking about my sisters while that victim sat there and said, "Yes, he's

* Neil Miller was wrongly convicted of rape in 1990. Mr. Miller spent ten years in jail before being exonerated by post-conviction DNA testing.

the one that raped me.” She had seen me before the trial, in Roxbury Court, along with a police officer who had said, “That’s Neil Miller. Is he the one?” She shook her head no and shrugged her shoulders. She did this three times before trial. Yet, in the courtroom, when asked if I was the one who raped her, she looked at me, looked back at the police and said, “Yes, he’s the one.” I do not hold any animosity toward her, for the simple reason of putting myself in her shoes. I tried to be her at that time. Why would I say that he is the person if I’m really not sure he is the person? Maybe it is a racial thing. “Some black guy did this to me, he looks damn close to the person who did this to me, so he’s going to be the one. The police believe he’s the one, so he’s the one.” Then I thought that it was, “Well, maybe he is the one. This is the person I feel is the one.” Maybe the police did not have to coerce her. Or maybe they did coerce her into believing that I was the person. They believed I was, so they said, “Look at him. Isn’t he the one?”

That is my opinion of what happened when the police had her alone. I came up with hundreds of scenarios as to why she felt that I was the one and for the first two years in jail, after I was convicted, I hated her. I hated her guts. I hated the sight of her. I hated the thought of her in my head. I hated seeing her in that courtroom crying. I hated feeling sorry for her at that time. And I thought, “I hope the real perpetrator goes back and sees her, and she realizes the mistake she has made.” But no one really cared about that but me. I also hated the judge, the jurors who believed what the DA made me out to be, the DA, and my lawyer, the public defender.

My lawyer told me he believed me, but I feel he did not do everything in his power to help me. It was later proven that I was right. After my first four years in prison, I started to calm down, I was tired of feeling angry. I was tired of feeling hateful. I even felt bad about what I had thought about that victim, and I cried. I got down on my knees and I prayed. I prayed to God that he would forgive me for hating the victim. I prayed that God would protect her and that he would show her who the real person was that did this to her. I also prayed for forgiveness for hating the DA because she really did not know whether I committed this crime or not, and in my opinion, she probably did not even care. She was presented with evidence that I was guilty, and she just did her job. After a while, I felt the same way about my lawyer. Maybe he did do everything in his power to help me.

Then in 1994, while watching the *Phil Donahue Show*, I found out about the *Innocence Project* and the new DNA testing that was now available. I listened to the whole show and wanted to contact the *Innocence Project* at the Cardozo School of Law, in New York, but I did not know the proper mailing address

In 1996, my first appeal was denied. Maybe my appellate attorney could have done more to help my case, but she did not know the grounds

upon which to argue the appeal. As a result, she argued the same theory my defense attorney had used at trial. The argument centered on identification, which had been the basis of the case in the trial court. This was a solid approach since not even the victim could remember whether she told the police officer that her attacker had brown hair or black hair. She could not remember telling the officer her attacker's height. She was uncertain whether her attacker was five feet six or six feet tall. She was even uncertain as to whether her attacker had a beard or a mustache, and she did not remember whether her attacker had any facial scars. Even after looking her attacker in the face for an hour and a half, she was still uncertain as to his identification. They were no more than five feet away from each other the entire time, and she could not remember any details of his appearance. Yet, surprisingly, she was able to identify the person sitting in the courtroom as the perpetrator. "He's the one who raped me," she said.

Hate is a very ugly thing. It eats at you. If it was hate I felt for her, I no longer feel it. I am glad to be rid of that feeling, but I still feel that the victim does not care. When I was released, I hoped she would come to me and say, "I'm sorry. I truly apologize for what happened. But I really felt within my heart that you were the person because you really do look like the person that raped me." I would have hugged and forgiven her. I still forgive her, but I am hurt by all of this.

In early 1998, I gave a voluntary sample of my DNA despite the fact that the Commonwealth was already convinced that they had the right person since my blood type is the same as that of the perpetrator. However, this blood type is very common, and the investigators also failed to consider any other blood type, different than mine, that was found on the victim's sheets. It turned out that although I have the same blood type as the person who committed the crime, our genetic makeup is very different.

Does the victim think about where her real attacker is now? Does the DA care that the rapist is still out there? Is this case still closed? Is it now forgotten that the wrong man was convicted and served ten years in prison? Are the police trying to find this person, and get him off the streets? Is he still here in Massachusetts or is he in another state victimizing another woman, shattering her life? These questions have been running through my head everyday for the past ten years.

I cried three times while I was in jail. The first time was when the jail door slammed behind me. I was scared because I had heard stories about what goes on in jail. When I was released, I knew people would still believe that I had committed this crime. I heard people whispering, and initially thought they were going to come over and say, "Oh, I'm so sorry about what happened to you." Instead, one woman said, "I say send him back, tar and feather him, and that's that." I could not believe what she said, I wanted to cry then, but I just smiled and said, "Everybody is entitled to his or her opinion."

The second time I cried in jail was because a couple of guys walked past me, spat at my feet and said, “You f--’n skinner.”¹ My first reaction was to fight them because I knew that I did not rape anybody. However, instead of using the anger and hate that I was feeling, I kept walking. I cried, and I did not care who saw me. I knew then that I was weak, and that I did not have anybody in prison to help me out if other inmates tried to “jump” me. On the outside, I had certain friends who would have put their life on the line for me, but in prison the best thing to do, especially when convicted of rape or molesting a child, is to have minimal contact with other inmates. Thank God I was never attacked, but I was afraid. When the other inmates said that, I cried. No one had ever spat at me or had ever been bold enough to call me a “skinner” to my face. I had always said that I would defend myself if someone ever insulted me; but, someone had insulted me and instead of defending myself, I just cried.

The third time I cried in jail was in April 2000, when I received the DNA test results. An *Innocence Project* student, Elliot Adler, who had pushed me to have the DNA test, also told me that Barry Scheck and Peter Neufeld had helped and guided him in every way possible to exonerate me. Elliot Adler salvaged all of my DNA evidence, which was about to be destroyed, so that it was able to be tested. In the middle of April, I was told, “Neil, the test came back and you were right. I believe you. You’re innocent.” I asked him, “What are you talking about?” and Adler responded, “Your test came back and you are not the rapist.” I said, “Well, I know. I knew that all along. I could have told you that. I have been telling everybody that for years.” Adler then told me that he had wanted to believe me, but had been hesitant because he did not know what was the truth and what was a lie. When he told me about the test results, I thanked him for the information, and asked him to call my sister and my appellate attorney, Nona Walker. Ms. Walker was a very big supporter of my innocence, and had always believed in me, although initially I was very leery of her belief. I had thought to myself, “well, she just asked me a few questions, and I explained everything to her, and she said she believed me. That’s strange.” My first attorney did not make the case sound simple, but Ms. Walker made it sound simple and truthful.

After I got off the phone with Elliot Adler, I spoke to a friend, whom I met in prison. He knew what I was in for but believed in my innocence. While we were talking, I told him there was a good possibility that I was going home. I did not want to tell him because he is only twenty-five years old, and he is in prison for natural life.² He had been in a car with friends to go out for pizza, but something happened along the way. He had not pulled the trigger, but had been in the car. I did not want to tell

1. “Skinner” is prison slang for a rapist.

2. A “natural life” term means imprisonment until death.

him that I was going home knowing he would be there for all his days as a killer. Why should I have told him that I was going home when that might have hurt him. However, I did tell him and prayed with him, and I cried. That was the third time I cried.

Living in prison is absolutely horrible. You are told what to do; you cannot go over to your friend's house; you cannot call a friend when you want. Although you can write a letter and hope for a response, sometimes people do not write back and that hurts. You are also taken away from your family. I was taken away from my daughter when she was three years and nine months old. To this day we do not have a relationship. One day she told me, "I can't stand you. You make me sick. I wish you were not my father." Nonetheless, I have tried to be nice to my daughter in order to recover the relationship we once had when she was three. However, no one really cares that my daughter hates me because I was not there for her for ten years. I wish that I could have been, and I wish that her mother would have brought her to see me in prison. I wish that her mother would have had a little more faith in me, but she did not. Today, I do not hate her mother although I used to. I used to call her every ugly name in the book. I did this because that is how much I hated her. She allowed my daughter to believe that I had committed a horrendous crime and went to jail for it.

My relationship with my wife was also destroyed. When she heard ten to twenty-five years, she thought the same thing that I did; "I can't do this." I felt like I was never, ever going to get out, especially when Massachusetts began passing new laws requiring convicted rapists to attend rape counseling. If you did not go to this rape program, you would be required to serve your entire sentence. If you made it before the parole board, you would have to sit there and cry, saying things like "I'm sorry. I didn't mean to commit this crime. I realize the wrong that I have done. Please give me one more chance to go back out there."

But, I did not rape anybody, so I refused to go to a rape treatment program, and I refused to listen to them tell me that I had to go. I refused to sit down there in front of three people, one woman and two men, and tell them that I was sorry for a crime that I had not committed. I told them to their faces, "I'm not going to tell you that because I'd be lying to you." If I had told them that I had committed the crime and was sorry, not only would it be held against me, but there would be no guarantee that I would be paroled. I made a choice; my choice was to maintain my innocence regardless of what the parole board thought. I would prefer that they look at me as an innocent person that refused to comply with the treatment program, rather than a convicted rapist who was complying simply to get out of jail. I refused to comply, and I would continue to refuse, even if the police picked me up right now, sent me back to jail and said, "You have to complete this three-year program." I would refuse to comply because I did not rape anyone. The DNA evidence has proven my innocence. It has

proven everything that I have been saying for ten years to everyone who has said, "You're a skinner."

The relationship with my daughter, as I said, is horrible. She does not want to see me, and if she does, she ends up spending more time with her friends in the area than with me. I try my hardest to please her. However right now, I am still at the point where I am just trying to integrate myself back into society.

If I look at my watch, which is going on quarter to twelve, we are getting ready to eat lunch in jail. Sometimes that is where my mind is when I look at my watch; we are about to go eat lunch; it is chow time. Do not get me wrong. I am happy to be out! I am very, very, very happy to be out. I am happy to be back with my brother-in-law, my sister, my nieces and nephews, and even a few friends. But even though I am delighted to be back with them, I am not happy. I feel like I am homeless. I am home, but I am not really home, because I do not really know where home is.

I am stuck between living with my sister and brother-in-law and still being in jail, where I had become so comfortable. There are days that I am so angry and get so nervous being on the train around a bunch of people that I wish I could go upstairs to my cell, close my door, and lock in. That is what I used to do whenever things got too hectic and did not make me feel right. I was so used to being able to close the cell door. In my cell, I could put on my Walkman, shuffle around in my confined space, and turn on a basketball game or a soap opera to cool down.

Even though I have done some speaking before large groups, I am still nervous speaking here today. While I am talking to you, you are looking at me and I am looking at you, but I am also wondering, deep down, "What are they really looking at?" Does anybody out there really care that I was in jail for ten years? It was tough, and it is still tough, but slowly and surely I am making my way back. To those of you who are graduating and will be practicing law, and to those of you who are just starting your law school education, when you become a lawyer do not think solely with your head, but also think with your heart. If you are defending someone, you have to speak from your heart and believe in your client. The strengths and skills that you will learn in law school will carry you a very long way. I thank you all for being here today, and I appreciate the opportunity to speak to you.