

THE CRIME AGAINST WOMEN THAT NO ONE UNDERSTANDS

This man has been charged with rape 10 times but never convicted of that crime. This story is a warning to all women.

SELF

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Leigh thought her date was going quite well, right up until the point, she says, when she was drugged and raped. It was her first time meeting Jeffrey Marsalis, a gregarious trauma surgeon who had contacted her through the online dating site Match.com. Tall, blue-eyed and engaging, Marsalis had taken her out in downtown Philadelphia, entertaining her with stories of life in the ER. “He seemed a little full of himself,” Leigh recalls; still, she was having a good time. She slowly drank one beer, then a second. Their date was in its fourth hour when Marsalis ordered a carafe of white wine, and Leigh excused herself.

“I would never think to be so cynical that I’d stand there and watch as he poured my drink,” remembers Leigh, a striking blonde (who, like all accusers in this article, is identified by her middle name). When the 28-year-old accountant returned to her barstool, her glass of wine was waiting. Leigh took a sip.

As she would later testify, the next thing Leigh remembers she was in a dark room, facedown on a bed—and Marsalis was anally raping her. The pain felt as if he were ripping her in two. Her limbs were leaden, her mind sluggish. “Stop, please stop,” Leigh mumbled. Marsalis simply chuckled. Leigh slid back into unconsciousness but kept resurfacing that endless night to discover Marsalis violating her limp body. Finally, she opened her eyes to an apartment filled with late-morning light.

“Good morning,” Marsalis said, smiling and leaning in for a kiss; Leigh, stunned, kissed him back. “I had a wonderful time last night. I hope you did, too,” she says he told her, staring into her eyes. Leigh felt groggy and confused as she pulled on her jeans. So when Marsalis walked Leigh to her car and suggested they get together again, Leigh heard herself say, “Sure.” She was certain she hadn’t gone to bed with her date of her own volition—and that she couldn’t possibly have blacked out after barely three drinks—but her certainty was softening in the face of his chivalry. Am I reading the situation wrong? Leigh wondered as she drove herself home. Would a rapist act this nicely?

Baffling as her experience seemed on that day in February 2005, Leigh was only the latest woman to struggle with the same confusion. Because Jeffrey Marsalis wasn’t really an ER doctor looking for love. He was an unemployed paramedic and nursing-school dropout whose true profession, prosecutors assert, was full-time predator. Investigators would discover 21 women who claimed Marsalis drugged and raped them—many listed in a file on his computer called “The Yearly Calendar of Women.” Authorities suspect his true tally is far higher. “Any woman was potential prey,” says Philadelphia special prosecutor Joseph Khan. “Plenty of women were attracted to him, but this guy was aroused by the very idea of nonconsent.”

As Leigh drove home that morning, she had no idea what lay in her future: that she would join 9 of those 21 accusers to face Marsalis in Philadelphia courtrooms over the course of two trials, telling nearly identical stories of assault. They would be 10 educated, professional women versus a

demonstrated liar—a man who had pretended to be a doctor, a CIA employee, even an astronaut—whom a court-appointed psychologist would decide met the legal definition of a “sexually violent predator.” And yet the most remarkable thing about both trials wasn’t the way they exposed the alleged tactics of a serial date rapist. It was that despite the outrageousness of the accusations against Marsalis, the testimony of 10 women wasn’t enough to get a single rape conviction against him. The verdicts in these cases would be far lighter than his accusers sought—and victims’ advocates say the outcome reveals a disturbing truth about the justice system. Nationwide, despite all the legal advances of the past three decades, little has changed for women who report a date rape. Because in far too many instances, juries don’t believe date rape exists.

When it comes to rape prosecutions as a whole, so much has changed for the better: Thirty years’ worth of advocacy, better investigation techniques and tighter laws have led more women than ever to come forward and report the crime to police. But in cases of nonstranger rape—which represent three quarters of all rape cases in the United States—all that progress often comes screeching to a halt in the deliberation room. “Cases where a victim knows her assailant are still extraordinarily hard to win,” says Jennifer Long, director of the National Center for the Prosecution of Violence Against Women in Alexandria, Virginia. “Juries are extremely resistant.”

Until now, it’s been impossible to know exactly how many of these cases collapse in court, because no prosecution data was being collected. But the research and training group End Violence Against Women International in Addy, Washington, just completed a four-year study across eight states and has allowed *SELF* an exclusive early look at its conclusions. Of all the rape cases that come across prosecutors’ desks, stranger-rape cases have the best courtroom odds, with 68 percent ending with a conviction or guilty plea. But when a woman knows her assailant briefly (less than 24 hours), a mere 43 percent of cases end in a conviction. When they know each other longer than 24 hours, the conviction rate falls to 35 percent. Even fewer, 29 percent, of intimate partners and exes are punished. “And keep in mind, the cases that come through the prosecutor’s door are the strongest ones—strong enough for the police to have referred them along in the first place,” notes EVAW International research director Kimberly Lonsway, Ph.D.

Back in the 1970s, most reported rapes were committed by strangers; those cases are now in the minority. Yet juries—and many judges as well—still think of rape as being only between strangers, says Lynn Hecht Schafran, director of the National Judicial Education Program of Legal Momentum, a woman’s advocacy group in New York City. “To a juror, a rapist is a guy who jumps out of the bushes and throws a woman to the ground,” Schafran explains. “She has terrible injuries, and she leaps up and reports it immediately to the police. Anything that falls short of that story is questionable.”

Incredibly, that analysis holds true even in a situation as extreme as that of Marsalis. What’s especially troubling is that the very things that some of his accusers speculate made the juries so skeptical are typical elements of nonstranger assaults. It doesn’t fit with most people’s misguided concept of rape, for example, that Marsalis’s accusers went out with him willingly—thinking him a worldly doctor, the embodiment of Mr. Right—and were initially enjoying their evening with him. As the defense hammered home, none of the women stormed to the nearest police station or went to a hospital for a rape exam and toxicology test. In fact, the opposite happened: In a near-masochistic twist, most of Marsalis’s dates had contact with him again—behavior that seems too bizarre to be believed, but that psychologists say is actually not uncommon among women raped by someone they know. Nonstranger rape is a distinct crime whose survivors exhibit equally distinct behaviors—the very actions the Marsalis defense used against his accusers. It makes you wonder: If these 10 women

didn't get a satisfying result, what chance does anyone have in a date rape case?

"You hate to tell people that we have such terrible success with these cases at trial, because it makes victims think, Well then, why press charges?" says retired police sergeant Joanne Archambault, president and training director of Sexual Assault Training and Investigations, also in Addy, Washington, a firm that educates law enforcement about rape. "But the truth is, until we change the public's attitude about how they see women and sexual violence, we're going to keep losing."

Two days after Leigh awoke in Marsalis's bed, she found herself seated across the table from him at a Chinese restaurant. *This is not a date*, she reassured herself; rather, it was a fact-finding mission. "I wanted to confront him about what happened. I needed to figure out what was going on," Leigh remembers. She hadn't told anyone she feared she'd been raped. She needed more information first, some validation of her suspicions. "And all that went wrong," Leigh whispers, eyes glazing with tears.

The last thing Leigh says she remembers about that dinner, she was picking at the noodles Marsalis was dishing from a serving plate, trying to muster up her courage to ask: Did you rape me? Then, she says, she blacked out. As Leigh would later tell the court, she woke up in Marsalis's bed again. He was on top of her, once again having sex with her inert body. "It was just devastating," Leigh says. She spends a long moment composing herself, tucking wisps of hair behind her ears. "I made the stupidest decision to go out with him that second time," she says finally. "I think to myself all the time, How could I have done something like that? But I did."

How *could* Leigh have done such a thing? The idea of reaching out to one's rapist seems like nothing any woman in her right mind would do. Yet the majority of the 10 women who ultimately testified against Marsalis had contact with him afterward. One 33-year-old woman testified that, after regaining consciousness in Marsalis's apartment, she discovered his bed was soaked with her menstrual blood, humiliating her; she later FedExed Marsalis a set of sheets. Two of his accusers befriended him. Two others went on to briefly date Marsalis. Yet another accuser, a 26-year-old pharmaceutical representative, told the court that the assault left her pregnant—and she allowed Marsalis, of all people, to accompany her to the abortion.

"There are so many reasons why victims reengage offenders," says Veronique Valliere, a clinical psychologist in Fogelsville, Pennsylvania, who specializes in sexual abuse. By establishing a relationship on her own terms, a person feeling helpless can reclaim her lost dignity. "Someone yanks that sense of control from you, and you need to get it back," Valliere explains. Denial also plays a powerful role, as many survivors have a hard time accepting the idea of themselves as a victim—and turn to their attackers to help explain away their fears. "We can't believe someone would do something so terrible to us," Valliere says. "We work under the assumption that this must be something we can understand through talking it over." It's the classic female response to tackling a problem: Let's discuss it.

Marsalis's accusers may have been especially prone to have further contact with him because in many cases their memories of those nights were foggy. And prosecutors argue that Marsalis skillfully exploited that confusion. In interviews with *SELF*, one accuser described how it unfolded: In October 2003, Marie was a 23-year-old grad student living in Marsalis's building when one evening, she ran into her neighbor "Dr. Jeff." Marsalis asked her out for a drink at a nearby bar. Two gin and tonics later, she would testify, it was suddenly sunrise, and Marie was naked from the waist down in

Marsalis's bed. "I was bleeding and hurting," she remembers. "But I just didn't remember anything. And I didn't want to acknowledge that I'd been raped." The whole thing didn't make sense to her—she'd never blacked out before in her life—so Marie got out of there as fast as she politely could and avoided Marsalis for several weeks. But when she came face-to-face with him at the building's Christmas party, she acted perfectly friendly. "Talking to him, I guess it was a way of asserting myself, an attempt to restore some normalcy," Marie says. "I was trying to be logical instead of emotional."

Nevertheless, Marie's subconscious couldn't forget. She began withdrawing socially and starving herself. A 5-foot, 100-pound pixie to begin with, Marie lost so much weight that within three months, she was hospitalized for a heart arrhythmia. As she lay in the ER, it occurred to Marie that Marsalis had said he worked at that very same hospital.

"I called him," she says hollowly. And Marsalis visited her, playing the role of doctor by wearing a stethoscope and flipping through her chart. Two days later, after Marie had gone home, the "doctor" showed up at her apartment to check on her. Then, as Marie would tell the court, Marsalis steered her to her bed, pinned her down and raped her again. This time, there was no blackout to cloud her perception; Marsalis offered no smooth talk as he pulled up his scrubs and left. Marie made her way to the shower, curled up under the water and cried. Yet she didn't even consider calling the police.

Think most women would behave differently—that in the same situation, they would jump up and call 911? Think again. According to government estimates, a mere 19 percent of rapes, including stranger rapes, are ever reported in the first place. As Valliere notes, women who have been sexually assaulted find so many reasons not to call police, including denial, shame or their hazy grasp of the facts due to drugs or alcohol. Many survivors assume they won't be believed. Still others, such as Marie and Leigh, are mortified into silence by what they see as their complicity in their own attacks. "I brought myself to this situation," Leigh explains, voice surging with emotion. "And I had done it not once, but twice. Who in the world's gonna believe that?"

Leigh never called the police. Instead, she did her best to move on. She forced herself to date again on Match.com—"I didn't want to be afraid," she says—where she soon met a man and fell in love. In September 2006, Leigh had been engaged for three days when she got a call from an FBI agent. "He said in a voice mail that it's about a man I dated from Match," she recalls. "And I knew, immediately," Leigh met with the agent in his Philadelphia office and poured out the story she'd been holding back for so long. It was only then that Leigh learned who Jeffrey Marsalis really was and why investigators were so keen on speaking with her.

The agent told Leigh that Marsalis had recently been tried for the rapes of three other women. The first accuser had called the police in March 2005—roughly two weeks after Leigh's attack. She was a 25-year-old pharmacist, a religious woman who had been saving her virginity for marriage until, she would testify, she had blacked out during a date with Marsalis and had awoken underneath him. In a surprising turn of events, when police showed up at Marsalis's apartment with a search warrant, the building's 29-year-old manager had blanched—and blurted, unprompted, that Marsalis had drugged and raped her, too. Up in Marsalis's apartment, law enforcement collected his computer; they realized they had an even bigger case when they found "The Yearly Calendar of Women," listing some 58 first names, and other files with contact information. Among them was a 27-year-old lawyer who told an uncannily similar tale.

The following January, all three of the women had taken the stand in *Commonwealth of Pennsylvania v. Jeffrey Marsalis*. By uniting them in a single trial, the Philadelphia district attorney's office had hoped to prove a pattern of predation, to erase any doubts a jury might have. But during the week-long trial, the case had come undone. For one thing, the defense denied that Marsalis drugged the women, and there was no physical evidence to support that accusation. Police had found a syringe of liquid diphenhydramine in Marsalis's apartment, a drug that can cause powerful sleepiness, and theorized that he'd used expired medications he'd had access to at school or work. But testing was not completed and the syringe was not introduced as evidence. Plus, none of the accusers had gotten a toxicology screening—which presumably wouldn't have turned up anything anyway, because the drug would have left their system quickly. It was the behavior of the women, however, that the defense used to truly torpedo the case. The apartment manager had become friends with Marsalis. The attorney had gone on to have a short relationship with him. Neither had immediately called police or gone to a hospital for a rape-kit exam. As for the pharmacist, she had waited more than a month to make a report.

The jury had acquitted Marsalis on all counts. Even so, moments after the jury read the not-guilty verdict, Marsalis was rearrested right in the courtroom: He had new charges to face. Already in custody during his first trial, he was denied bail again and sent immediately back to jail.

Prosecutor Joseph Khan urged Leigh to join this second trial, for which they planned to combine the strongest cases among Marsalis's long list of accusers. Marie, too, was contacted by the D.A.'s office. She was reluctant, but they told her that her story was compelling enough to bolster the other cases. "I wouldn't have done it if it was just me," Marie says. "But because I could help the others, I felt it was something I had to do." So the two women joined five others to face down Marsalis in court. They had safety in numbers; no way could they lose this time.

"Jeffrey is a playboy," said defense attorney Kevin Hexstall, speaking to the jury in June 2007. "You don't have to like him for that, but you got to respect and understand the fact that's all he is." The core of the defense's theory was simple: All seven women were lying. Each had gotten drunk, had consensual sex with Marsalis and regretted it. Then, when authorities called them and revealed that Marsalis had lied about his profession, they felt betrayed and cried rape as revenge. "This is not the forum for that!" Hexstall told the jury in his closing argument. "Throw a brick through his car window, slash his tires. Get online and tell the rest of the world he's not a doctor.... You don't come up with this kind of nonsense and play with this man's life!"

The jury sat rapt. "Let's think about what some of the real patterns are, and some of the real similarities in these cases," Hexstall boomed. "All of these women wanted to date Jeffrey Marsalis," he said. "They all went out drinking. Nobody said, 'Let's catch a movie, we want to go to a ball game, let's just have dinner, let's meet in the park, I just want to talk.' They all went out with Dr. Jeff, and they all went out drinking alcohol."

Although rape-shield laws protect women from having their sexual past discussed at trial, acquaintance-rape defenses continue to "play into these myths about how 'good' women act versus 'bad' girls," Long says. "And that it's the risky behavior of the 'bad' girls that somehow invites a rape." Trials often hinge not on the behavior of the defendant, but rather on whether the woman did enough to protect herself from his advances. From that point of view, Marsalis's seven accusers had done everything wrong. "We were definitely on trial," Marie comments drily. "If it was the 1600s, it would

have been a stoning.’’

The women’s composure may not have helped their standing with the jury. Although a couple of them became emotional during their testimony—including Marie, who blotted her eyes and took breathers—most, like Leigh, kept it together. But experts say many jurors expect women to weep when they are talking about a rape. “If you don’t cry, it means nothing happened to you,” says Legal Momentum’s Schafran. “Of course, if you cry too much, you’re too hysterical to be believed.” (Hexstall reminded the jury that one woman had cried while testifying about her abortion, but not while discussing the alleged rape—proof, he claimed, that the sex had been consensual.) The fact that many of the women had continued to function in their everyday life was further evidence that nothing had occurred. “Rape is the only crime where victims aren’t allowed to be OK,” says psychologist Valliere, who points out that in cases of car theft, for example, the theft’s emotional impact doesn’t factor into the verdict—only whether the car was taken against the victim’s will. “But if someone is raped and seems OK, we say, ‘Could that really have been a rape?’”

It’s a given, too, that no one on a rape jury has any real insight into the crime or its consequences, because during the jury-selection process lawyers routinely weed out almost anyone who admits to real-life experience with sexual assault. Clouding matters further, Pennsylvania law forbids the use of expert testimony to explain the behavior of rape victims (a policy state legislators are trying to change, as a result of outcry over this case). So the Marsalis jury had little context in which to understand the lurid, difficult-to-digest details they were hearing.

Judge Steven Geroff also wouldn’t allow witness testimony from yet another accuser, a woman who had worked with Marsalis at an Idaho ski resort. And in one final confusing stroke, right before jurors headed into the deliberation room, they were read a jury instruction—antiquated and misleading yet still standard in Pennsylvania—saying in part that the women’s failure to immediately report their assault “should be considered” in the jury’s decision.

When the jury returned after five days, it proclaimed Marsalis not guilty of eight of the nine counts of rape he was facing. They had deadlocked on the remaining charge, unable to decide whether Marie’s second, violent encounter had indeed been a rape. Instead, the jury opted to find Marsalis guilty of two counts of the lesser charge of sexual assault. One assault conviction was for Marie’s second attack. The other conviction was for the case of a 26-year-old advertising exec who, upon waking in Marsalis’s bed in the middle of the night, had driven herself home; when Marsalis had called to apologize for “things getting out of hand,” she had refused to see him again. She was the only one of the seven women who had called police—albeit four years later, after she saw a TV news report of Marsalis’s courtroom rearrest.

The jury isn’t talking, but courtroom observers have a theory about why the jury chose to believe these two women above the other five: Their behaviors fit best with the rape-victim stereotype. Both had welled up while testifying and described lasting emotional damage. They were also the slightest physically of the accusers; in a parade of strikingly put-together women, they may have come across as most vulnerable. And so the jury seemed willing to acknowledge that something had happened to them—although whatever it was, it didn’t rise to the level of rape.

As for the other five accusers, including Leigh, the jury concluded that no crime at all had been committed against them.

“Twelve people looked me in the face and called me a liar,” Leigh says softly, hugging her knees at the kitchen table of the apartment she shares with her husband. “I put myself out there. I told them every terrible detail. And they said no.” Even Marie, who had the most positive verdict, felt cheated, especially when she realized she’d have to endure a retrial on the hung rape charge. As she watched footage of jurors sprinting from the courtroom, some shielding their faces, Marie became enraged. “If you’re going to make a decision that affects people’s lives, tell us why you decided what you did,” she demands. “Don’t go running out of there, hiding your face like you’re ashamed!”

In the end, Marsalis took a plea deal to avoid a retrial: Prosecutors agreed to drop Marie’s remaining rape charge in exchange for Marsalis pleading no contest to a charge of “unlawful restraint” for yet another accuser who had not been part of either trial. “They used my hung charge to get some vindication for her, which she wouldn’t have gotten otherwise. So that made it worth it,” Marie says.

Although Marsalis faced as little as community service, at his sentencing hearing, Judge Geroff delivered a stronger message than the jury had: He sentenced Marsalis to 10.5 to 21 years behind bars plus 4 years probation, the maximum allowed, and noted that he’ll face mandatory Megan’s Law registration for the rest of his life. “What you were was a wolf in sheep’s clothing,” Geroff told Marsalis from the bench. “Your lifestyle was a fantasy. What’s happened to your victims is reality.” Seated together in two rows at the front of the courtroom, a group of Marsalis’s accusers smiled with relief, some through tears. The sentencing softened the blow of the disappointing verdict; finally, their combined efforts had yielded something. “At least he’s locked away, and I know he won’t do this to anyone else. Without all of us there, that might not have happened,” Leigh says. “And of course, all this isn’t even over yet,” she adds.

Because in January, Marsalis heads to a courtroom to be tried for rape a third time. Court documents filed by the D.A. in the Philadelphia cases describe the accuser’s story: Back in late September 2005, shortly before his first trial was to begin, Marsalis made his way to Idaho, where he took a job as a security guard at a ski resort. There he invited a 21-year-old coworker to join him for a drink at a local bar. Over beers, she told him she wasn’t interested in him romantically—she was a lesbian. Marsalis ordered another round and handed her a kamikaze. She noticed a sugary-looking residue at the bottom of the glass; when she drank it down, however, it tasted bitter, not sweet. The rest of her story unfolds in a now-familiar way: She awoke the next day in Marsalis’s bed, feeling sore and nauseated. He graciously walked her back to her dorm, chatting the whole way and leaving her with the suggestion that they “hang out sometime.”

Instead, this accuser did something unusual: She contacted the police. Then she had a rape kit done. The prompt investigation turned up eyewitnesses who said they had seen Marsalis dragging her, barely coherent, out of a taxi while she mumbled, “No, I’m going to stay here.” And when police confronted Marsalis, he initially denied having sex with her. “She is more of a manly type of a woman for one,” he told police. “If I was going to have sex with somebody, wouldn’t I have picked someone who is some drop-dead gorgeous woman? You think?”

This case has it all, it seems, everything to erase doubt from the mind of a juror: prompt reporting, physical evidence, eyewitnesses, Marsalis’s inconsistent statements to police and, because of the accuser’s sexual orientation, no dating behavior to confuse a jury. In other words, her case bears no resemblance at all to a typical report of nonstranger rape. And that is exactly why experts predict that this time around, the woman taking the stand will finally win. ■