

## 2001 Pulitzer Prizes-COMMENTARY

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The Doctor's Story  
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Late on a Friday night in July of 1995, Patrick Griffin was arrested, handcuffed and taken off to a holding cell, charged with sexual assault of a patient. The 41-year-old New York City gastroenterologist was held at the Tombs for some 30 hours, time enough for him to absorb, perhaps for the first time, the depths of the peril confronting him, thanks to allegations made months earlier by a long-time patient. He stood charged with the crime of oral sodomy, alleged to have been committed on a 43-year-old woman while performing a colonoscopy on her in his Central Park West office. His arrest brought a flood of calls from patients who expressed incredulity or who wanted to know what was going on. What the rest were thinking -- the ones who didn't call -- he would never know. What was clear was that everyone in his practice knew within hours that their internist had been taken off to prison as a sexual predator.

Crimes charged to doctors are a news event, especially those involving sex, and this one was no exception. Not long before Dr. Griffin's arrest, a young intern had been marched out of St. Lukes-Roosevelt Hospital in handcuffs when an emergency-room patient accused him of having molested her. This brewing scandal too made news, short-lived though it was -- the accuser having conceded fairly soon that she made the whole thing up. No such resolution would come in the case of Patrick Griffin. Immediately after his arrest, the Manhattan District Attorney's Sex Crimes Unit provided a 1-800 number, and a message broadcast on the radio and published in the New York Post, urging anyone having reports to make against Dr. Griffin to come forward.

Released on bail arranged by his wife, Kimberly Griffin, a critical-care physician at Mt. Sinai Hospital, Patrick Griffin found himself without funds and without a practice. Throughout the summer and fall, one HMO plan after another sent letters announcing they were dropping him, and refused to honor his bills. Unable to pay the rent, to say nothing of all the legal defense fees ahead, he supported himself tending bar part-time, and by driving trucks.

It was not the sort of future anyone could have envisioned for the Oklahoma-born-and-bred Patrick Griffin, an early achiever -- one of nine children born to an oil pipeline worker of distinctly modest means. By the age of 16 he had left Oklahoma for Columbia University, where he had a four-year scholarship. Following his graduation from Columbia Medical School, a residency at Columbia Presbyterian Hospital, and a fellowship at Harvard Medical School, he was appointed, at the age of 33, director of fellowship training and internal medicine at St. Lukes-Roosevelt Hospital.

His private office was necessarily a modest one, an employee testified at his trial. This, she explained, had to do with the fact the doctor continued treating patients whether they ever paid him or not -- a tendency that caused the devoted office manager to sigh that he was not the best businessman.

Nor had he been the best equipped of men to deal with the trouble that announced itself once he was accused. The conspicuously soft-spoken physician proved no match, certainly, for the deftness and sheer force of will of the patient he had treated since 1991, and who would end up, four-and-a-half years later, filing a \$10 million lawsuit against him.

It was not the first lawsuit filed by Christine Jeffreys, a 43-year-old woman with a checkered financial history. Temporarily evicted in 1991 for nonpayment of rent, she claimed this trauma had caused her to suffer stomach problems and assorted other forms of emotional anguish, and proceeded to file a \$2 million lawsuit against the apartment corporation. Soon after, she began seeing Dr. Griffin for stomach complaints and emotional stress -- visits of no small importance for her civil suit against her landlord. As papers filed in that suit showed, Ms. Jeffreys expected Dr. Griffin to testify to the physical and psychic damage she had suffered -- but in this, she and her attorneys were mistaken.

Subpoenaed to provide such testimony in November 1994, Dr. Griffin declined to comply and informed her attorney that he could not subscribe to the claim that the eviction had caused Ms. Jeffreys's pains and other complaints. Prominent among those complaints was depression, for which he had prescribed Zoloft, an antidepressant. A few weeks after the doctor's refusal to support her civil suit she visited him again to say she was having stomach pains, whereupon she was given an appointment for a colonoscopy and an upper endoscopy. On the scheduled date -- Jan. 13, 1995 -- she arrived at Dr. Griffin's office suffering bouts of diarrhea and explained that she had had great trouble consuming enough of the prescribed colon cleanser, Golytely, the night before. This was not an uncommon problem among patients, as the doctor would later testify. Informed that she would arrive late, Dr. Griffin sped off to Roosevelt Hospital to perform another colonoscopy. He then returned to his office, administered the standard sedatives -- Versed and Demerol -- and performed the planned examination of Ms. Jeffreys, which took, under the circumstances, twice as long as the usual time he required for such an examination.

Such was the event that led to arrest and public humiliation,

conviction and the revocation of the doctor's medical license -- not that anyone could have imagined a hint of this that January day. Certainly no one in the office could have suspected anything amiss from the demeanor of the patient, who rested in the procedure room for 45 minutes after completion of the test, and then sat in the waiting room nearly one hour more, in order, she said, to get a prescription for her cold. She had nothing to say of any trouble, either, to her boyfriend waiting outside to drive her home.

Ms. Jeffreys, indeed, gave numerous and changing accounts of who she first told and what had happened during and after the alleged assault by Dr. Griffin. She did not go to the police until February for various reasons, among them, she testified, because she couldn't find a station with a policewoman. The first person she talked to, it seems, was a chiropractor, who informed Ms. Jeffreys that her husband, an administrative court judge, would be greatly interested in this story -- as he proved to be. After giving Ms. Jeffreys the name of a civil attorney who could bring a case against the doctor, the judge co-signed a retainer agreement that would put him in line for a considerable chunk of the damages that might be awarded. At the doctor's trial in June of 1996, numerous supporters appeared, some of them patients trying to raise defense funds for their now bankrupt doctor. Along with them sat Kimberly Griffin, who attended each day of the trial in a state of consuming rage -- a tone still in her voice today when she talks about the insanity of the charges the prosecutors brought against her husband.

They were, indeed, remarkable charges. If the accusation were to be believed, the defense attorney pointed out, Dr. Griffin had decided in the midst of his examination, to place his tongue in a vagina swimming in fecal matter thanks to the condition in which the patient arrived for her colonoscopy. And he had chosen to do this in a thinly curtained room surrounded by staff workers four feet away, a room in which his assistants could enter any moment. Dr. Griffin had, in his career, performed close to 9,000 colonoscopies and endoscopies without ever having shown such proclivities -- and now, the defense argument went, of all the women he might have violated he had decided to sodomize one in this condition?

It was not the kind of question likely to concern prosecutor Linda Fairstein's Sex Crimes Unit whose standard mode it was to try to establish a pattern of offenses. That was the function of the 1-800 number calling on the doctor's patients to come forward -- and come forward some women did, with information Assistant District Attorney Bridget Fleming found highly significant. Three women had called her to report that they had been given more sedation than they expected, prosecutor Fleming informed the judge. A woman reported that she had awakened to find her hair mussed. Another called to say that she had woken up in a room different from the one in which she'd had the procedure. Another now remembered that the internist had given her a breast exam, and she wondered whether that was appropriate. Another called to report her discovery -- after awakening from a procedure -- that one of her earrings was missing. There were one or two more reports along these lines -- in addition to one about a woman

patient suffering from low blood sugar who claimed, the prosecutor said, the doctor had an affair with her and had bought her a dress. Each day brought new claims against the doctor, including prosecutor Fleming's allegation, in open court, that she could find no such AIDS clinic as the one the doctor said he donated his services to on Fire Island, New York. She had investigated -- looked in the phone book, the paper and various other places, and had consulted a friend in that community, she informed the judge. An enraged defense attorney demanded the opportunity to present outside witnesses who would testify about the clinic -- which did indeed exist -- and correct the impression Ms. Fleming had left with the jury, that the doctor had lied about his service. No such witnesses would be necessary, the presiding judge, Marcy Kahn, ruled, nor did she have the slightest reason to doubt the prosecutor had made her comments in good faith -- an observation the judge was to make quite often in the course of the trial.

No claim would be more useful to the prosecutors' case than the one the doctor had himself helped to produce, albeit inadvertently.

Three-and-a-half months after the alleged assault, Christine Jeffreys had arrived at the doctor's office wearing a huge wig, and swaddled in a very large gold lame raincoat. Under that coat, unknown to the doctor, was a tape recorder supplied by the police.

Ms. Jeffreys soon got to the point of her visit -- the charge that the doctor had sodomized her. The doctor exclaimed "Oh, no, no, no no . . . Christine, no way . . . no, no, I did not" -- over and over again, while Ms. Jeffreys insisted, "Yes you did." She told Dr. Griffin: "I'm going to sit right here."

In the middle of all this, the tape reveals, she began to talk about her civil suit against her landlord, and to say she needed Dr. Griffin because he was acquainted with her case.

Ms. Jeffreys continued her assertions of a sexual attack, charging she had been disrespected. The doctor now began trying to placate Ms. Jeffreys, whom he viewed first and foremost as a patient -- one he had treated for depression. He was also a man not given to confrontation, and certainly not with patients, many of whom were drawn to his exceptionally respectful manner, as they later came forward to say.

"It took my breath away to see all those patients, hundreds of them who came down to support him -- there was a meeting in a pub. I looked up and saw this elderly woman who came down from Harlem in a wheelchair -- her home care worker brought her," says Kimberly Griffin. They had reason, she says of the patients' feelings for her now former husband (the Griffins were divorced in 1999). "He was a doctor who would give you the time of day."

The doctor began explaining to Ms. Jeffreys about the effects of the sedatives she had been given, and he apologized for any perceived disrespect. He also undertook -- to his later regret -- a flustered academic effort to illustrate the effect of the drug by telling her something that had not happened -- namely that he had kissed her -- which she would then think she remembered, he hoped, and would perhaps even elaborate on, thus enabling him to show her that she

was remembering details about something that had never happened. Had he been a quicker thinker, he said at his trial, he would have picked a better example -- something like, "Don't you remember me in a clown's suit halfway through the procedure?" He might also have argued, of course, that, given the sexual accusations Mrs. Jeffreys was making, the example that did come to mind was hardly surprising.

Later, angry, apprehensive and aware that Ms. Jeffrey's main preoccupation all the time he had treated her was her civil suit, the doctor composed a self-protective note that reflected the spirit, if not the exact detail, of the meeting. He wrote, for example, that he had told his accuser to see a psychiatrist. This he had done months earlier, in fact, but not at this encounter, as the tape recording showed. On such grounds, the prosecutors decided to charge him with another felony -- falsification of business records.

There would be an additional charge of sex abuse, on Ms. Jeffreys's complaint, that while performing her colonoscopy the doctor touched her vagina.

On the stand Ms. Jeffreys told of the apprehension she had felt about testifying, the strength she had needed to endure. As became clear early in the proceedings, the complaining witness had nothing to fear in this courtroom, where she was given singular protection from questions that might raise questions about her credibility. Judge Kahn prohibited the defense from raising instances of the complainant's alleged perjury in the civil case against her landlord, and in testimony before the Office of Professional and Medical Conduct. The defense could not raise her prior meritless litigation, her history of financial trouble, her string of bounced checks, nor could the jury know the millions she was asking in her suit against the doctor -- all issues that could establish motive and a willingness to lie for financial gain.

Explaining her rulings, Judge Kahn numerous times cited her views, which coincided with those of the prosecutor -- namely that victims of sex crimes merited special protection if others were to be encouraged to come forward. Ms. Jeffreys had a sexual offense claim. Therefore, the judge announced, she would not allow certain questions about perjured testimony, "to avoid harassment of the witness." She wanted to avoid an atmosphere, said the judge, "where someone who says she has suffered a sexual offense does not feel too intimidated to come forward and tell a jury about it."

She was making it impossible to have any meaningful confrontation with the witness, responded the infuriated defense attorney.

The prosecutor, in turn, was permitted to introduce one unsubstantiated story after another about alleged misconduct by Dr. Griffin. Instructed by the court earlier that she should not bring up one of those stories -- about the doctor masturbating in front of a woman patient -- prosecutor Fleming nonetheless proceeded to do just that in open court. Here the judge stopped her, while the defense called for a mistrial. She would not declare a mistrial, Judge Kahn decided, because she instructed the the jury to disregard

the inflammatory references to masturbation, which she described as "a buzz word." And there would be no mistrial, because, the judge again found, the prosecutor's offense had been made in good faith. No witness but Ms. Jeffreys appeared in court to say that the physician had ever molested them. On the witness stand Ms. Jeffreys told of the suffering and injury she had sustained as a result of the doctor's act -- details itemized also in the bill of particulars filed in her lawsuit against him. She watched too much television, the jury learned, she had gained 20 pounds, while also losing her appetite. She had been unable to participate in a dance class. "I used to frequent the beach," the witness testified, "but now I don't because of what has happened to me."

The day of the alleged assault Dr. Griffin's staff prepared a surprise birthday party for him. Asked at his trial how old he was that day, the doctor replied, "I would have been 40."

It was an oddly worded answer, but clear to at least one person in the courtroom. Marilyn Lasker, whose aged mother Dr. Griffin had treated with a degree of care far beyond the call of duty, reflected, "In his mind, life ended that day."

She and her husband, Judge Arthur Lasker, attended the trial every day. In the long grim months before his trial Dr. Griffin kept a notebook record of everyone, patients or colleagues, who called to offer support or to say hello. Many did, and there were also those doctor friends who turned away. When the defense committee asked for a contribution, one physician Dr. Griffin had befriended sent \$10. This he needed no notebook to remember.

On June 20, 1996, the jury brought in a verdict of guilty on charges of sodomy and altering business records. At the sentencing hearing in September, prosecutor Fleming cited the strength of the case against Dr. Griffin -- an address in which she did not neglect to mention the missing earring.

He had held himself out as a healer and protector and committed a crime of cowardly violence whose scars could last a lifetime, declared the judge. She then sentenced the doctor to three-and-one-third years to 10 years in prison. The judge also announced she was issuing an order of protection on behalf of Christine Jeffreys.

While Dr. Griffin prepared for state prison, his new attorney rushed to the appellate court to argue -- successfully -- that the doctor remain free on bail pending appeal. Harvey M. Stone, former chief of the Appeals Division of the U.S. Attorney's Office for the Eastern District of New York, then got to work on the appeal which resulted, in April of 1998, in the reversal of Dr. Griffin's conviction. It was a rare victory in a state Supreme Court not given to overturning criminal convictions, but Dr. Griffin still faced the prospect of a retrial. Appalled by everything about the case -- as the distinct edge of rage in his appellate brief clearly showed -- attorney Stone tried to dissuade the Manhattan District Attorney's office from mounting another trial.

All in vain. The doctor's new trial attorney Paul Callan, former deputy chief of homicide in the Brooklyn District Attorney's office,

did, however, meet with the head of the Manhattan District Attorney's Sex Abuse Unit, Linda Fairstein, and with prosecutor Fleming, who had taken a pounding in the appellate court's stinging majority decision. The prosecutors offered a deal -- probation for the doctor in exchange for some admission of guilt on a sex charge. He had committed no such crime and would make no such plea, answered the doctor, notwithstanding Mr. Callan's warnings that he faced an extremely high risk of conviction at retrial.

The atmosphere of the second trial and the rulings from the bench bore small resemblance to that of the first. Unpreoccupied with imperatives like the need to encourage rape victims to come forward, Judge Jeffrey Atlas afforded the defense the standard rights of cross-examination. The judge also precluded any attempt to inject the race of the complaining witness, a black woman, as prosecutor Fleming had done at the first trial.

At this trial, attorney Callan described the effects of Demerol and Versed, a drug known to produce memory loss and sexual fantasy -- noting, for instance, that women going into labor are not given Versed because its power is such it will wipe out the memory of the birth.

When it was all over, five weeks ago, and the verdict of the jury due, Dr. Griffin went to church to say a prayer and then to court where he waited, head bowed. He did not have long to wait before the jurors filed in, looking straight at him, some smiling, and then the foreman announced his acquittal. The doctor broke down in tears and there were tears, too, in the eyes of some of the jurors -- whose views of the prosecutors' case was evidently shared by the judge. After the trial, Judge Atlas asked attorney Callan why the doctor hadn't waived a jury trial.

"I would have had your client acquitted two days ago," the judge told him.

Uncertainly gathering the shards of a career, the doctor -- still stripped of his medical license -- has, as they say, no immediate plans. It will take a lot more than a license to restore the world lost to him when the tort lawyers and the District Attorney's Sex Crimes Unit descended.

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