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Stuart Taylor JR. AND  
K. C. Johnson. — Until Proven  
Innocent — Political correctness  
and the shameful Injustices of the  
Duke Lacross Rape Case  
12. BLIND INJUSTICE:

INDICTED AFTER PROVEN INNOCENT

**N**IFONG'S FAILURE TO ARREST Collin Finnerty and Reade Seligmann for two full weeks after April 4, when Crystal Mangum identified them as assailants, was all the more striking given the loud demands from the Durhamites whose votes he wanted that he lock up the "rapists."

Why had he not arrested them as soon as he decided to charge them? In the previous year, Nifong's office had gotten alleged rapists off the streets of Durham as quickly as it could. Even in the thirteen rape cases where Nifong ultimately agreed to dismiss the charge, the defendant was arrested.

Nifong appears to have followed a different course in this case to exploit a loophole in North Carolina law. In the Tarheel State, as in most, the main judicial check to a prosecutor's arresting a demonstrably innocent defendant and forcing him to trial is the so-called "probable cause hearing," a sort of truncated minitrial.

In this case, of course, Nifong had no serious evidence at all except for Mangum's inconsistent and wildly incredible succession of stories. At a probable cause hearing, defense lawyers could have destroyed her credibility, especially if she showed up to testify. In attacking probable cause, they could have also demonstrated the unreliability of Nifong's rigged April 4 photo-ID process and any in-court identification Crystal might be asked to make thereafter. And they could have sought to introduce the DNA results and any other evidence of innocence already in their hands.

Such a hearing would have been a disaster for Nifong. His claim-to-fame case would probably not have been dismissed—not with a friendly judge presiding. But Nifong would have been humiliated and his case torn to shreds in open court. This alone might very well have cost him the primary election.

Fortunately for Nifong, North Carolina prosecutors routinely avoid probable cause hearings by submitting cases to a county grand jury, which, under North Carolina law, is a secret proceeding where only the state can present

evidence, where the defense is not entitled to be present or challenge evidence or present its own evidence, where the proceedings are not recorded, and where the law prohibits anyone from discussing what goes on inside the grand jury room. And that's exactly what Nifong did in this case, in the process leaving the alleged rapists at large for two weeks until the Durham County grand jury's next regular meeting, on April 17.

Nifong also moved on April 12 for Judge Stephens's permission to seal indictments of Reade Seligmann and Collin Finnerty that he would have the grand jury issue at its regular meeting the day after Easter. Sealing the indictments, a tactic regularly used when the accused is a flight risk, was another way for Nifong to imply the players' guilt. The next day, while preparing to indict two innocent young men to win his election, he said on the campaign trail: "The reason you should vote for me for DA is I would rather do the right thing than win this election."

Nifong was evidently still worried about a loose end: What if either or both of the two players he was about to indict could quickly show that he (or they) had not been at the stripper party at all? Such a development might be devastating to Nifong's case, his career, and his pension. So on the night of April 13, Himan, Gottlieb, and other police went without warrants into the dorm where Reade Seligmann and Collin Finnerty lived.

Duke campus cops let the Durham officers into a locked dorm—illegally, perhaps—in what the Brodhead administration would later call a low-level blunder. The Durham officers spent seventy-five minutes asking lacrosse players which team members had *not* been at the party. Since Nifong was personally directing the investigation, this move seemed to be a clear violation of the state bar's ethics code provision prohibiting a district attorney or someone representing him from questioning people known to be represented by counsel without obtaining the lawyers' permission. Most players refused to answer the cops' questions. One or two did respond.

"We're on your side," one cop sweet-talked sophomore Rob Wellington, a close friend of Reade Seligmann's. "We're fighting for you guys. Can you tell us what happened that night?" Wellington sensed that his questioner was deceitful.

The next day, Himan tried pumping Ekstrand, saying at one point that he thought Seligmann had never been at the party.

Such was the background when defense lawyer Bill Cotter told Ron Stephens during a preindictment session that he thought Nifong might charge someone who wasn't even at the party. "Bill, in your wildest dreams," the judge responded, with a knowing look over his glasses. One of the lawyers wondered whether the judge had been getting private briefings from the DA.

During this preindictment period, "All of the lawyers sat in my conference

room talking about thought, 'Well, she her and talked to they never spoke to and we just didn't

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room talking about who it was going to be," recalled Bill Thomas. "We always thought, 'Well, she's going to pick the guys who lived in the house, who met her and talked to her.' Collin and Reade we never even considered because they never spoke to her or had anything to do with her. She was throwing darts and we just didn't know where they were going to land."

But as Easter weekend approached, the word started spreading through the lawyers that Nifong had indicated it would not be any of the captains. Suddenly everyone else on the team felt more exposed. Ekstrand told his clients that any one, two, or three of them could be indicted and that they should be ready to turn over their passports and to post bond if arrested. One of the retired New York firefighters came to Durham with the deed to his house in case he might need it to post bond.

It "felt like Russian Roulette," Seligmann was later to tell Ed Bradley on *60 Minutes*. "It could have been any single one of us. Kids were even calculating their chance . . . the percentage . . . that you would get picked."

Bill Thomas decided to make one last effort to show Nifong that he was about to make a horrible mistake. He called Butch Williams, another Durham defense lawyer (for Dan Flannery) who had also known Nifong for many years, and Wade M. Smith of Raleigh, the universally respected, courtly, sixty-nine-year-old dean of the state's criminal defense bar. Nifong himself was later to say of Smith: "I don't know of an attorney in North Carolina that would question Wade Smith's integrity."

If he will listen to anyone, thought Thomas, he will listen to us. The three went to see Nifong on Friday, April 14. They asked him not to rush indictments on April 17, when the grand jury was scheduled to meet, and instead proposed a dialogue in which they would disclose their own evidence, including the photos taken at the party and interviews of the lacrosse players. This material, they said, would reinforce the proof of innocence provided by the DNA evidence that Nifong already had.

"He looked at us," Thomas later recalled, "and said, 'Gentlemen, I know a lot more about this case than you do. Thank you for coming down.' I was astounded at his refusal to discuss the evidence with us. I have never seen anything like that in my professional experience."

As Nifong walked the three defense lawyers to the door, he started to say—in a voice suddenly laced with anger—something like, "And you can tell that Joe Cheshire"—when Butch Williams cut the DA off before he finished the sentence. They did not want to hear him venting against Cheshire. This, too, mystified Bill Thomas. He thought of Cheshire as a wonderful person and lawyer, a straight shooter, honest and forthright. He later asked Cheshire what Nifong might have against him. Cheshire said he had no idea.

That same Friday, Nifong called Richard Brodhead to notify him confidentially that two Duke lacrosse players would be indicted on Monday. This was the only conversation that the two men ever had.

"That Easter weekend was one of the worst moments in my life, as it was for forty-six other families," Larry Lamade later recalled. "Nifong had indicated that he was going to indict at least three lacrosse players the week after Easter. All the lacrosse families knew the allegations were false, but all had to retain attorneys. We felt like the men of the USS *Indianapolis* in World War II after their ship was sunk. They bobbed hopelessly in the waters of the Pacific for days while the sharks indiscriminately picked them off. Innocence did not mean that the boys were not vulnerable. It was a Kafkaesque moment. Your son could be indiscriminately indicted. Multiple choice—no wrong answers. Were you praying that your son not be indicted? Of course. Would there be any relief if he were not indicted? No. Collin, Reade, and David could just as easily have been Peter, Ned, and Matt. We were all in this together. The truth had been trampled."

The inevitable Jesse Jackson—claiming that "something happened"—recited a host of factually incorrect "facts" (that Mangum had never before danced at a party, that Devon Sherwood didn't attend the party). He vowed that his Rainbow/PUSH Coalition would pay Crystal's college tuition even if she were proven to have lied.

"My son is being pursued by a pack of wolves," MaryEllen Finnerty had felt for weeks. Over Easter weekend, Collin learned that he was on the short list of possible defendants. But still nothing was definite. Was it a list of three? Of thirty? The next few days were an emotional roller coaster. Collin canceled a planned trip to a Mets game Friday night to hang out with his longtime girlfriend, Jess. He spent a relatively carefree Saturday with friends from his high school, Chaminade, in Minneola, Long Island. Then came trouble sleeping and nightmares about being indicted. He and Jess went to Manhattan's Chelsea Piers and talked about how this might be their last normal night together.

On Easter Sunday, MaryEllen and Kevin Finnerty took their son and fled their home in Garden City, Long Island, for fear that Nifong might put on a show for the media by having Collin dragged away in handcuffs. On this, the holiest of days in the Christian calendar, the devoutly Roman Catholic Finnertys could not go to their own church. They hid out in a New York City hotel, leaving Collin's two younger sisters, Molly and Emily, with friends.

That morning's *Los Angeles Times* kept the media bandwagon rolling with a long piece headlined: "Lax Environment; Duke Lacrosse Scandal Reinforces a Growing Sense That College Sports Are Out of Control, Fueled by Pampered Athletes with a Sense of Entitlement."

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CNN's Paula Zahn came on that night, sounding like a paid mouthpiece for Nifong. She dripped with arch incredulity at defense lawyer Joe Cheshire's assertion that no assault had occurred. How, Zahn wondered, could Cheshire explain the accuser's "internal injuries"? Why would she have "made up this story"? The truth was that no "internal injuries" had been found and that Crystal had claimed rape to get out of being locked up in a mental facility. But Cheshire could not yet be sure of that, because Nifong had not yet turned over this evidence. Zahn also asserted confidently that Nifong "would not be proceeding with this case if he didn't believe that this alleged victim had been raped" and that he must have the evidence to prove it. Wrong again.

The Finnertys spent Monday morning, April 17, waiting for Collin's lawyer in Durham to tell them who had been indicted under seal by Nifong's grand jury. Finally the phone rang. Kevin answered and scribbled, Collin sat on the bed reading over his shoulder: "If there are indictments, Collin will be one . . . 90 percent sure there will be indictments." The big kid fell back on the bed. It was the first time he had cried since a friend's murder by terrorists on September 11, 2001.

"How can this happen in the country we live in?" MaryEllen Finnerty asked herself. Her son had never been contacted for questioning by police or prosecutors. Never been asked to testify to the grand jury. Never given a chance to show that he had left before any rape could have occurred.

It could happen because grand juries are rubber stamps. The notion that they protect defendants—*any* defendants—against prosecutorial abuse is a fraud. The old adage that any prosecutor could get a grand jury to indict a ham sandwich—for the murder of the pig, in a longer variant—is valid in most states and especially in North Carolina, which does not even transcribe or tape-record witnesses' testimony.

As in most states and the federal system, prosecutors choose the only evidence that grand jurors hear. They use hearsay and other evidence inadmissible in trial. They need not tell the jurors about evidence of innocence, no matter how strong. Not surprisingly, it is very rare for any grand jury in North Carolina or anywhere else to turn down a prosecutor who asks for indictments. This is well known to every lawyer and every sentient journalist who spends any time covering criminal justice in this country. But that did not stop dozens of TV lawyers and journalists from citing the grand jury indictments as showing that Nifong must have strong evidence that Finnerty and Seligmann were guilty of rape.

Writing in the *Baltimore Sun*, Rick Maese asserted, "I know that a grand jury indictment means the prosecutor feels like he has the case, like he's ready

to stand in front of a jury the very next day and get a guilty verdict." On Fox, USC law professor Susan Estrich—who would later come to a very different view of the case—accused defense lawyers of trashing the "victim" with "a vigor I have never before seen in the 25 years I've been writing about and teaching rape law" rather than operating "the way things are supposed to work." The defense, she wrote, "should have presented its evidence to the District Attorney before he went to the Grand Jury seeking indictments; did they?" Of course, they had tried to do so, and Nifong had refused to see them. Nancy Grace hailed the grand jury as a critical check on the prosecutor, noting that "the grand jury can actually open up the floor to questions to, say, the detective or the victim, the alleged victim herself." She brought on a defense attorney, Nicole Deborde, who noted that "one of the things that the prosecution potentially could have done is actually bring her into the grand jury to testify. They could have subpoenaed additional people from that house to testify in that grand jury . . . and those records would then be available not only for the defense but for the prosecution, as well, and future use in trial."

In reality, the Durham grand jury heard no testimony from Crystal Mangum, Kim Roberts, any lacrosse player, any doctor or nurse, or anyone else with firsthand knowledge of what had happened. The only witnesses were two cops who had already lied repeatedly to the players and the court about the case: Gottlieb and Himan. According to North Carolina law, no record remains of what they were told—despite what Grace and her guest-informed television viewers. The grand jurors, evenly divided along racial lines, even though the county is only 38 percent African American, indicted eighty-one people in the space of a few hours that day. They obviously had no time to do anything but approve without serious deliberation all of the indictments drafted for them by Nifong's office.

Months later, after the fraudulence of the case and Nifong's conduct had become a national scandal, one of the grand jurors who had indicted Finnerty and Seligmann told Chris Cuomo of ABC News: "Knowing what I know now and all that has been broadcast on the news and the media, I think I would've definitely made a different decision. I don't think I could've made a decision to go forward with the charges that were put before us. I don't think those charges would've been the proper charges based on what I know now."

That same morning, which happened to be Richard Brodhead's fifty-ninth birthday, Joe Alleva and Tallman Trask echoed Nifong's trashing of Collin, Reade, and their teammates. The Duke officials did not quite call them "a bunch of hooligans." But they were quoted expatiating on the team's "boorish behavior" in the April 17 *Herald-Sun* and *Chronicle*. Dean Sue made similar comments. Trask added that lacrosse players had been "caught

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hitting golf balls onto East Campus." The article did not mention that this had happened in 2002.

After learning of Collin's indictment on charges of first-degree rape, first-degree sex offense, and kidnapping, the Finnertys flew to Raleigh-Durham and checked into the Washington Duke Inn under an assumed name.

Phil and Reade Seligmann were already in Durham. What with Phil's post-9/11 business misfortunes and Reade's run of injuries at Duke, Kathy worried that Reade might also be unlucky in what some called the "Crystal lottery." Phil thought that he would be in the clear because he had left the party so early.

Reade and Phil were sitting around at a lawyer's office that Monday with Reade's roommate Jay Jennison, his father George, and Rob Wellington, killing time by playing video games and reading newspapers while awaiting word of who had been indicted. "It was like waiting for a sword of Damocles to cut you in half," Phil later recalled. A phone call brought the bad news. Crystal had picked Reade. It was the first time the son had ever seen his father cry.

Reade called Kathy. It was her birthday. She was at a lacrosse game, watching her twin boys Maxwell and Cameron, both Delbarton juniors, following in their big brother's athletic footsteps. "Mom," he said, "she picked me." Kathy was in shock. Reade made her promise not to watch him being arrested the next morning on TV.

Phil and Reade immediately got moving to nail down Reade's alibi evidence. First they picked up records of the ATM withdrawal that Reade had made as his first stop after leaving the party. Then they tracked down Moezeldin Elmostafa, the cabbie who had picked Reade up at 12:19 A.M., while the alleged thirty-minute rape had to have taken place. The cabbie remembered the young athlete and his generous tip and signed a hastily drafted statement for Phil.

Meanwhile, Joe Cheshire had recommended that the Seligmanns retain Kirk Osborn, a seasoned, widely respected defense lawyer and onetime public defender from nearby Chapel Hill. "We needed someone who was not going to be afraid," Cheshire later recalled, "because this is going to be a war. He was very smart and a good lawyer with a lot of courage. This was a war against someone we both knew to be evil." Osborn, a six-foot-four, three-year letterman on the University of Colorado football team, who at age sixty-four was still as fit as most twenty-five-year-olds, had defended more than a dozen capital murder defendants and saved them all from being sent to death row. He was known for fighting clean but very hard.

That night from seven to ten, Reade and Phil had their first meeting with Osborn. "They're absolutely innocent." Phil had declared in a preliminary

phone conversation. "Well," thought Osborn, who had represented more than fifty murder defendants, "I've heard that before." But it didn't take much time with Reade for the lawyer to become a believer.

"I love Reade," Osborn said months later, after the sole practitioner and his friend and fellow lawyer Ernest L. "Buddy" Conner Jr., had yielded the lead role in Reade's defense—and a grateful client—to a larger law firm from Charlotte, North Carolina's biggest city. "I was immediately attracted to him. I was awed by him, really. He was such an exemplary guy. He had never done anything wrong. When things started to go bad at the party he had had the good sense to get out of there. I didn't know what to believe at first. But after talking to him I believed that nothing had happened, just as Joe Cheshire had told me."

Reade and Collin encountered each other at five the next morning, April 18, in a Durham parking lot. That was the appointed time and place to surrender to Durham police. Then came the jail cell, the fingerprinting, plus some patter from Sergeant Gottlieb, who seemed a nice guy at the time. He even asked Collin if there was anyone in Durham whom they wanted the police to look after on their behalf. Reade, asked the same question by Himan, said yes: the other lacrosse players.

To avoid the media siege, Kathy Seligmann had moved out of her own home and taken refuge at a friend's house with the twins and fourteen-year-old Benjamin. The morning of the arrests, she found Ben sobbing in the basement TV room. "Why are they doing this to him, Mom?" the boy asked. Kathy looked over at the TV. There was Reade—a hero to his little brother—in handcuffs, being led to jail.

Reade was not sobbing. He was angry. He carried himself with pride, ramrod straight, while handcuffed. And he approached his indictment as a challenge. The Seligmans' pride in their oldest son burned brightly through the fears and hardship. "The kid is a rock," Phil said months later, when asked how Reade was handling the pressure. "I'm not half the man that kid is—he is so courageous and tough. From the start, he told me, 'Dad, it's a no-brainer. The truth is on our side.'"

But having the truth on your side only goes so far, the defendants and their families were learning, when the district attorney, the cops, and many in academia and the media are bent on destroying you.

Collin found himself waiting his turn in a courtroom while a convicted child molester was sentenced. This was the worst day of his life. A mob of photographers burst through the door, surging within inches of his face. He tried to remain expressionless. In that atmosphere, if he had smiled the media would have called it a smirk; if he had frowned they would have called it an angry glare.

Reade and Collin were both released after a few hours on \$400,000 bond.

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had represented more. But it didn't take much. The sole practitioner and his dad yielded the lead role to a law firm from Charlotte, which was assigned to him. I was awed by what he had done anything wrong. He had the good sense to get out of talking to him I believed would lead me."

Then Osborn and Mack went to Nifong's office to urge him to look at their alibi evidence, which they said would show that it was impossible for Reade to have been part of any rape. But Nifong, who had known Osborn for twenty-five years, refused to see them or look at the evidence. Instead, he sent an aide with this message: "Mr. Nifong says that he saw you on TV declaring your client is absolutely innocent, so what is there to talk about?"

There was plenty to talk about. Unlike most alibis, Reade's did not depend on the testimony of friends or family. There were time-stamped photos showing that the dancing had stopped at 12:04 A.M. There were phone company records of Reade's eight cell calls between 12:05 and 12:14, the last being to a taxi service. There was the cabbie's matching phone record, plus his written statement that he had picked up Reade and Rob Wellington at 12:19, a block from the party house, and had taken them to an ATM machine five minutes away, where Reade got cash. There was a bank record of Reade withdrawing cash from the same ATM at 12:24. And later, Osborn also tracked down the security video showing Reade at the ATM from 12:24 to 12:25, and got a more detailed, signed affidavit from the cabbie showing that he had also taken Reade and Rob from the ATM to the Cookout Restaurant, where they bought food to go, and then back to their dorms, where an electronic record showed Reade swiping into his dorm at 12:46.

During this same period, in photos time-stamped from 12:30:12 through 12:31:12, Mangum was smiling and unmussed on the back stoop of the house, trying to get back in; in a 12:37:58 photo she was passed out on the back stoop; and in the 12:41:32 photo she was being helped into Roberts's car by an unindicted player. At 12:31, a lacrosse player also captured a brief video of Mangum exclaiming, "I am a cop."

When could Reade have fit a thirty-minute gang rape into this schedule?

The Seligmans went from the courthouse to Bob Ekstrand's office, where Reade, his dad, Osborn, Ekstrand, and Stef Sparks spent much of the next two days attacking Reade's alibi from every angle, as they debated whether they could risk making it public.

When Tricia Dowd saw Reade and Collin get out of the police car in handcuffs, she thought to herself, "Oh my God, what has this man done?" Later in the day, Dowd dropped by Ekstrand's office to say good-bye before returning to Long Island. When she saw Reade, she started to cry. He came over and hugged her, saying, "Mrs. Dowd, don't worry. I have an alibi; I can take the bullet for the team. If they were going to pick anyone, I'm glad they picked me." Dowd stayed in the office for an hour and a half; Reade remained upbeat throughout.

Reade's alibi evidence was made public in stages, which may have diluted its impact on public opinion. Lawyers for other players dribbled some of it out on the day of the arrests. The cab driver, Moezeldin Ahmad Elmostafa, a Sudanese immigrant, confirmed what Reade had said about his role on an April 20 CNN program. Osborn made most of the rest of the alibi evidence public on May 1, as an attachment to a court motion.

From that point forward, no serious student of the case had any doubt: Seligmann was innocent of rape. He was innocent of standing by while others raped. He was also, it would soon become clear, innocent of abusing women. Innocent of racism. Innocent of thuggishness. Innocent, even, of hiring strippers, a decision in which Seligmann—and, for that matter, Finnerty—had no part and for which they had had no enthusiasm.

But Nifong continued to assert Reade's guilt. Duke continued to treat him like an outcast. And many a journalist and professor continued to call for his head. The inimitable Wendy Murphy, for one, dismissed the photographs establishing that the rape could not have occurred before Reade left. "All the photographs . . . were doctored, where the date stamp was actually fraudulent." Murphy speculated without a shred of evidence. Even Nifong had made no such claim. And experts hired by defense lawyers confirmed the accuracy of the time stamps by digging into the underlying metadata, which are almost tamper-proof.

All this kept a possible thirty-year prison term hanging over Reade, ruined his college experience, and drained his family's savings. Reade later told Ed Bradley of *60 Minutes* what it was like:

*To see my face on TV, and that, you know, in those little mug shots, and above it saying, you know, "Alleged rapists." You don't know what that does to me and to my family and to the people that care about me. . . . Your whole life, you try to, you know, stay on the right path, and to do the right things. And someone can come along and take it all away, just by going like that. [He pointed a finger.] Just by pointing their finger. That's all it takes.*

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Even so, Reade told more than one teammate: "I'm glad they picked me. I can prove I was not there."

Collin was not glad they picked him. He took it very hard, worried about the effects on his family. He, too, had a good alibi: He had never been near Crystal after the dancing had stopped. Nor had he ever been in the bathroom where the attack allegedly occurred. Finnerty's legal team fingerprinted the bathroom, from top to bottom, and found no prints from Collin. That result came as no surprise: Finnerty never set foot in that bathroom—either on March 13–14 or at any other occasion in his life. From 12:10 until 12:20, as Roberts and Mangum went to the back of the house, Finnerty and several other members of the team milled around for a brief period in the living room. At no point during this period was Collin ever alone; several members of the team recalled seeing him leave through the front door. At 12:22 A.M., in the first of a series of eight cell-phone calls, Finnerty called another member of the team and asked whether he wanted to get something to eat. Five minutes later, he received a call from a different member of the team: they talked about where and what to eat. By this point, Collin had gone to the house around the corner rented by William Wolcott and K. J. Sauer—he had to pick up his Playstation, which he had left there. Finnerty's legal team had later used technical means ("triangulation") to prove how his eight calls were made "on the move" and in different zones away from Buchanan house.

In short, as of 12:27 A.M. on March 14, 2006, Finnerty had unimpeachable electronic evidence to prove that he was not at 610 North Buchanan. For the next half hour, he made several more calls and then walked across East Campus to pick up food at Cosmic Cantina, a Mexican restaurant. A credit card receipt showed Jay Jennison, one of the team members with Collin, paying Cosmic Cantina at 12:56 A.M. Finnerty then took a cab back to his dorm. And, of course, even more than Reade, the six-foot-five, rail-thin, freckle-faced Collin looked nothing like the three "plump," far shorter assailants whom Crystal had described to police on March 16.

But in those days nobody would take the word of any Duke lacrosse player, or any of his friends, for anything. And Nifong had not revealed such evidence of innocence as Crystal's March 16 descriptions. It was also clear from Kirk Osborn's experience that Nifong was bent on prosecuting Collin and Reade no matter what the evidence: he would (and later did) simply change his allegations to get around the alibis. So Wade Smith, Collin's cagey, conservative lawyer, kept his cards close to the vest. The details of Collin's alibi would remain secret until any trial.

After the release of Reade and Collin on bond, the Finnertys returned

north. (One consequence of being charged with a violent felony was suspension from Duke.) They found their home besieged by TV trucks. Kevin Finnerty parked some distance away and got close enough on foot to see cameramen trespassing in his yard to shoot through the windows of his home. A helicopter buzzed overhead. The Finnertys drove east, to their vacation home in Westhampton Beach. The media had not yet found it. They would. The Seligmans arranged to stay at a friend's house in Connecticut.

The media mob was in full cry. One of the very few guests who tried to speak up for the presumption of innocence, Stephen Miller, of the Duke Conservative Union, was worrying "that two innocent people may have possibly —" when Nancy Grace, his host, impatiently cut him off: "Oh, good lord! . . . I assume you've got a mother. I mean, your first concern is that somebody is falsely accused?"

Conservative MSNBC host Joe Scarborough, showing the versatility of cable news at spewing venom from the right as well as the left, announced: "The ax falls at Duke as two star athletes are busted on rape charges adding to an ugly all-star team of accused rapists, wife beaters and murderers who have filled the ranks of college and professional sports teams over the past several years."

On Fox, Wendy Murphy declared that "we are all being spun by a group of defense attorneys" claiming to have evidence of innocence. "Why didn't he go to the DA with this information?" she demanded. The answer of course, was that defense lawyers *had* gone to the DA with powerful evidence of innocence, and the DA had refused to look.

And in *cnni.com* interviews, the outrageously biased Lester Munson, identified by *Sports Illustrated* as its "legal expert," displayed how ready some liberals were to throw the presumption of innocence into the trash for all practical purposes in their zeal to dump vitriol on the lacrosse players. Munson dismissed DNA evidence—which has cleared many an innocent poor defendant—as virtually irrelevant except to prove guilt: "There are hundreds of convicted rapists in prison even though there was no sign of their DNA in the examinations of their victims . . . the absence of DNA is not conclusive by itself." He also falsely implied that the team had a history of "previous predatory conduct."

The next day, the better to slime Reade Seligmann, Munson went to astonishing lengths to convict *all* defendants who say they have alibi evidence: "You don't see many alibis in criminal cases—it's a very rare thing. Ordinarily, 99 times out of 100, the police have the right guy, and you'll find that most people arrested were involved in something. Getting the wrong guy is very unusual."

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So why not just send all defendants straight to prison, or to the execution chamber in capital cases, without trial? Munson did not explain. Ironically, in *Munson Sports Illustrated* had hired a "legal analyst" who had forfeited his license to practice law in Illinois. In 1991, the Illinois Attorney Registration and Disciplinary Commission moved to disbar him because of his continued misconduct while on probation for "neglect of three client matters as well as misstatements regarding the status of two of the client matters." He entered into a plea bargain to voluntarily give up his license.

"The media," MaryEllen Finnerly said later, "are disgusting."

One of the very few journalists who leaned against the pack was Chris Cuomo of ABC News. He interviewed Brian Loftus, who had two sons on the Duke team, on *Good Morning America* on April 18. "This man and his family come from Syosset, New York, they're working class," Cuomo said by way of introduction. "He's a former fireman and a veteran of 9/11. He speaks to us about how sending his kids to Duke University, let alone to play on the lacrosse team, was a dream, and that now all of these families are dealing with almost unimaginable pain."

CUOMO: "Two young men that you knew are now known at least to the system as potential felons. How do you deal with that?"

LOFTUS: "You know, Chris, when I got word today that my kids weren't two of the kids being indicted, it, you know, . . . it was a relief. But right now, I'm sick to my stomach. Like I told you, I'm not an emotional person, but I started crying earlier today because those two kids' lives are ruined, I mean, just totally ruined. For the next six to nine months they're going to be scrutinized and looked at as criminals. I know these kids. And—it's the furthest thing from that. . . . I heard about this was when one of my sons was going to the precinct to give DNA. I asked him 10 times, I said, 'Did anything happen?' Both my sons vehemently, all they ever told me, that, Dad, nothing happened, nobody did anything."

CUOMO: "We hear about the 'Blue Wall of Silence,' not talking about the police, but the Duke Blue Devil lacrosse players. Do you think that's fair?"

LOFTUS: "It's not fair. These kids were willing to take polygraphs, these kids were willing to take blood tests, they were willing to come down and give statements. They did everything. They gave their DNA. We thought that once we give that, we—thought it was going to be over. . . . But every night, every day, all we see on the TV is that we're hiding something. Obviously."

at felony was suspended by TV trucks. Kevin Johnson was seen camcorder on foot to see camera down of his home. A few days later, they would. The accused. The guests who tried to get out of the Duke Center, "possibly—", "I as- is that somebody is ing the versatility of the left, announced: pe charges adding to murderers who have over the past several ing spun by a group ence. "Why didn't he the answer of course, full evidence of inno- sed Lester Munson, ived how ready some into the trash for all crosse players. Mun- ry an innocent poor "There are hundreds sign of their DNA in is not conclusive by y of "previous predation went to as- have alibi evidence: are thing. Ordinarily, you'll find that most he wrong guy is very

*there's nothing to hide. . . . I feel like the world has been pulled from underneath my feet. My kids—when you hear them sobbing on the phone that, that their lives are like destroyed and you hear other people saying the same thing to you, you just wonder what went wrong? We know nothing went wrong. I cannot stress that any more. Nothing happened that night."*

Nobody who knew Collin or Reade well ever believed for a second that they were capable of such a crime. Yani Newton, a friend of both, learned of their indictments when a weeping friend came down the hallway waking everybody up. The sophomore women sat in their pajamas watching TV in disbelief. "If you had to pick two people from my class, those would be two of the last you'd pick," Yani recalled. "I thought, no way this could have happened. This is bullshit." Kertsin Kimel, the women's lacrosse coach, called to check on how Yani was bearing up. She could no longer hold back the tears. She didn't understand how this could be happening, she told the coach.

Yani and some other women made a banner saying WE SUPPORT DUKE LACROSSE and hung it out their window for the camera crews to film. Every day from then on she proudly wore Duke lacrosse insignia. "I was like a walking billboard," she said later. "I felt that there was some power in me saying this. . . . I understand the power of me not being white." Yani has African-American, Native American, English, Irish, and Italian blood. This ancestry, she later said, "is at the end of the list of characteristics or attributes that describe me." But if she could use it to help her friends a little bit, she would.

A "Support for Reade Seligmann" petition soon circulated at Duke and elsewhere. "I met Reade in high school and ever since then he has stuck out in my mind as the most caring and honorable individual I have ever met," wrote a young woman. "He's the most amazing person I have ever met, with the biggest heart." Others wrote: "Everyone that knows Reade loves him"; "one of the most kind and gentle people I know"; "one of the least violent people I know"; "the nicest person I have ever met."

Collin's friends and family also rallied around him, for many long months. "He is such a gentle soul," mused Eileen Cornacchia, MaryEllen Finnerty's sister and best friend. "that it is a knife in the gut to think that someone could try to mess with his life the way they did." A well-known figure in Palm Beach, Cornacchia described the effect on the family in an e-mail to a friend:

*Kevin has been working 28 hours a day—8 days a week—to clear his son. This, while trying to get his fledgling Hedge Fund Company off the ground. This is my family's defining moment. Everything is designated as*

*either before or after this happened. I us charity galas, chaire now. We have circle close—cherishing al gather us all toget overachievers—and up call as to what re. The Innocence Proje judges, injustices of, lots of grace and em. Collin is so precious.*

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*either before or after the Collin thing. We are all different people than before this happened. I used to enjoy the Palm Beach social thing, the black tie charity galas, chaired several of them myself. All that is over—seems empty now. We have circled the wagons—kept our real friends—keeping family close—cherishing all of the children in our large family—creating events to gather us all together whenever possible. We are strong Irish stock—overachievers—and extremely close. Talk about a slap across the face wake-up call as to what really matters—this was it. Now we talk about things like The Innocence Project, the judicial system, academia in America, the press, judges, injustices of all kinds. It's all different now. Nothing petty anymore, lots of grace and empathy and positive action when necessary. Time with Collin is so precious.*

The day after the indictments, Bo Carrington talked things over with his Spanish instructor, a graduate student. She started out very hostile, saying that she lived in the Trinity Park neighborhood and feared that Duke students were committing rapes there. Then Carrington mentioned that Reade Seligmann was one of the two students indicted. The instructor had taught Seligmann in a course the previous semester. "All of a sudden," Carrington later recalled, "she went from an accusatory position to being so sad that Reade was being caught up in a big lie. She started talking about how sad it was that Reade's picture was all over the news. She knew Reade and therefore *knew* he was innocent. That's all it took, knowing Reade, Collin, or Dave."

Taylor Price, then a twenty-year-old Georgetown freshman, had known both Collin and Reade for years. He had spent some fifteen summers playing tennis and golf with Collin in Westhampton Beach, on Long Island, where the Prices and the Finnertys vacationed, becoming very close friends. Taylor and Reade had been classmates at Delbarton, a high-quality, all-male school in Morristown, New Jersey, run by Benedictine monks.

Taylor loved them both like brothers. He saw Collin as a big, gentle, lovable kid who never wanted to say or do the wrong thing. Reade was one of the nation's most accomplished high school athletes as well as a quiet leader off the field. Not the type to run for class president, but he was a guy "who would do anything for you."

A loud shriek woke Taylor up the morning of April 18. It was his mother, reacting to the television image of Reade and Collin getting out of a police car in handcuffs. Taylor went through the day in shock. Spending much of it at the funeral of yet another friend's father only made it worse. For weeks he had thought it possible that some lacrosse players had done something to the accuser. But the instant he learned that Collin and Reade could be targets, he

became 100 percent certain that nothing could have happened. These were decent, gentlemanly guys, and the allegations went against everything Taylor knew about their characters. Not to mention the fact that both were in serious relationships with their girlfriends.

Talking through the situation with others, Taylor came to what to some seemed a startling conclusion: "What they're going through," he told people, "is a whole lot worse than what I'm going through."

What Taylor was going through was the aftermath of spinal cord injury that had left him a quadriplegic, from a freak accident while diving under a wave off the same Long Island beach that he and Collin had frequented for so many summers. It happened in July 2004. After Taylor was helicoptered to Stony Brook Hospital, the Finnertys and Seligmans were among the first people at his bedside. Later, Kevin and MaryEllen Finnerty led the charge in organizing a charity golf tournament to raise money for Taylor's long-term medical expenses. After many months of therapy, Taylor entered Georgetown University a year later than planned. He maneuvers around campus in a motorized wheelchair. For the foreseeable future, he has no fine motor skills and will need a full-time attendant. Friends marvel at his upbeat attitude and determination to recover.

How could anyone think that what had befallen Reade and Collin, whom Taylor was confident would be found innocent, was worse than Taylor's own misfortune? "People say, 'Oh, come on Taylor, how can you say that?'" he explained. "But I've had a lot of time to think about it. Some of my physical abilities and the way I move around in life are different. But I'm still Taylor, the same person I always was, and my accident didn't affect my credibility, my reputation, or the way people think about me. For all I know, medical science may change my situation in the future.

"Look at their situation. They have all the same abilities they had, but the way they could be perceived will be different. This changes their reputations. This will always follow them. Twenty years from now, if you Google Reade Seligmann or Collin Finnerty, this will probably come up. Any time they go sign a job application, this is there, and unfortunately forever stays with them. If they walk into a bar, someone might say, 'Aren't you that guy?' And if it's dismissed without going to trial, well, people can think, 'They're white and they're rich and that got them off.'"

Indeed, the media reveled in portraying the Finnertys and Seligmans as stinking rich. "They came from a world of hushed golf greens and suburban homes with price tags that cross the million-dollar line [and] exclusive, all-boys Catholic prep schools," *The News & Observer* gushed the day after their arrests.

In fact, Phil Seligman's treatment of his son, who related to the terrorist bond was a tremendous amount of money—would be especially put through college. Taylor Nifong filed his charges.

As the media went to friends: "I live near... wouldn't have me as... Born a Jew, he had earned largely by an... falling tree that had...phaned at fifteen, was Catholic school. But...alism, or for enduring

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In fact, Phil Seligmann, an intense, self-made man boiling with rage at the treatment of his son, had lost much of his money due to his business setbacks related to the terrorist attacks of September 11, 2001. Raising Reade's \$400,000 bond was a tremendous hardship for the family. And the legal costs to come—about \$90,000 a month, with the total expected to rise to well over a million dollars—would be especially onerous for a family that had three other sons to put through college. Twins Cameron and Max, both high school juniors when Nifong filed his charges, were also lacrosse stars.

As the media were playing up his supposed wealth, Phil commented wryly to friends: "I live near three country clubs; I can't afford any of them and two wouldn't have me as a member." He especially resented the "racism" smear. Born a Jew, he had endured anti-Semitic slurs growing up. And he had been raised largely by an African-American woman after his mother was killed by a falling tree that had nearly killed seven-year-old Phil, too. Reade's mother, orphaned at fifteen, was born Protestant. The parents sent their sons to a Roman Catholic school. But nobody was giving the Seligmanns points for multiculturalism, or for enduring hardships, in that spring of 2006.

When Phil and Reade were starting the long drive home to New Jersey two or three days after Reade's arrest, Phil pulled into a Durham car wash. Waiting outside for their Ford Explorer to go through the machinery, Reade, wearing a hat and sunglasses, tried not to look like the six-foot, one-inch, 225-pound jock whose face had been on millions of TV screens.

It didn't work. "Dad," Reade said with some urgency, "it's time for us to leave." Four black car-wash workers were buzzing among themselves and one was making gun-to-head and other menacing gestures with his finger at Reade. Would they attack the defendant accused of a racially motivated rape of a black Durham woman? The Seligmanns did not want to find out. They pulled away and headed north, toward home, leaving Duke and Durham behind them as fast as they could.

Kevin Finnerty, one of five boys from a close-knit family of modest origins, was another self-made man, and rich in more ways than the media imagined. He had worked to support himself from age fifteen and started college on a swimming scholarship. It took ten years to pay off the loans. He had borrowed money to buy an engagement ring for MaryEllen, his longtime girlfriend. Then Kevin had made it big on Wall Street in a succession of financial jobs. He had an extraordinarily loving family. He was also an exceptionally generous and self-effacing donor to charities, especially to a mission in Tanzania run by a childhood friend who became a priest.

Kevin and MaryEllen, granddaughter of a New York City fireman and of Irish immigrants, had five children, all good athletes. They were very religious

Catholics, and she devoted herself to her kids, who called her "the strictest mother in America." "This is an incredibly tight family who are happiest when they are sitting around the family room after dinner sharing stories and laughing," said a close relative. "They adore each other." Kevin, the relative said, "has told me personally on many occasions that he is the most surprised of anyone at his financial success and the great blessing of his family and he knows that God is watching what he does with what he has. He is truly the most generous person I have ever met."

Collin and Reade and their families were not the only ones being slimed in the media. The whole team had been smeared from coast to coast as a bunch of thugs who stood by and watched while a defenseless woman was being raped by their friends. But at least they weren't looking at thirty years in prison. Dave Evans would later admit a surge of relief on learning that he had not been one of those indicted. "But you hate yourself," he later said. It felt bad to feel good when teammates were in such peril.

Dave's peril would come. Within days it became clear that Nifong was still gunning for him as his third defendant. "We knew for weeks that he was coming after us," Dave later recalled. "Every day you wake up and you never know when it's coming. You're walking down the street and you never know when it could happen. We were stuck on the tracks and could see the train coming." Added his father: "Every day was a bad day because every day he could be arrested and of course at the same time he's studying for his final exams—and doing real well on them, by the way."

"That someone such as Crystal Mangum could come forward and tell these wild and outrageous stories, someone who is either disturbed or making up stories for some other reason," Bill Thomas later reflected, "and can hold Duke University hostage, hold Durham hostage, destroy a national championship caliber lacrosse team, and put three young men in danger of thirty years in prison is just an incredible, complete failure of the justice system."

And of the media system. And of the higher education system. And of the political system. Quite apart from Nifong, all have been deeply infected by the brand of racial politics practiced by many of today's black leaders and embraced by politically correct journalists and academics. And all share responsibility for trashing the lives of Collin Finnerty and Reade Seligmann.

Richard Brodhead certainly did his part. Two days after the arrests of Reade and Collin, he drew applause while telling the Durham Chamber of Commerce: "If our students did what is alleged, it is appalling to the worst degree. If they didn't do it, whatever they did is bad enough." While Brodhead mentioned the need to avoid "a rush to judge," he seemed oblivious to the fact that by this time, the evidence pouring into the public record was

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Nor did Brodhead deny the rape charge, that was the end of that they had been raped. The facts, on a team party organized by strippers whom they were drinking with that were suspended

That same evening an initiative discussion was held on campus as a start at improving the situation "a moment to look at ourselves."

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making it ever clearer to careful students of the case that the rape charge was very probably a fraud. It also was becoming perfectly clear that even if a rape occurred, Reade Seligmann was not there.

Nor did Brodhead say what Reade and Collin had done, apart from the rape charge, that was "bad enough." Such language struck many as an innuendo that they had done something terrible to the accuser even if it was not rape. The facts, on the other hand, show that Reade and Collin had attended a team party organized by their captains; had watched with polite distaste the strippers whom the captains had hired; and had probably engaged in underage beer drinking. If every Duke student who had ever done something like that were suspended, the place would be almost empty.

That same evening Brodhead participated in the first Campus Culture Initiative discussion of the lacrosse scandal in the Duke chapel. This "Conversation on Campus Culture" was designed in part, said Dean Sue, to make a start at improving Duke students' "culture of crassness." Brodhead called it "a moment to look at things and ask if those things are what we want for ourselves."

The nine-member panel included students, the university chaplain, and one faculty member. That was Group of 88 member Mark Anthony Neal, who pressed for curricular changes to "allow our students to engage one another in a progressive manner." He was joined by student Dinushika Mohotige, whose admission to distributing wanted posters earned her no rebuke.

Soon thereafter, Neal was to describe himself as devoted to "intellectual thuggery." Calling himself a "thugniggaintellectual," he said in *Duke Magazine*, the journal the university publishes and sends six times a year to its alumni, that this meant a "figure that comes into intellectual spaces like a thug, who literally is fearful [*sic*] and menacing. I wanted to use this idea of this intellectual persona to do some real kind of 'gangster' scholarship, if you will. All right, just hard, hard-core intellectual thuggery."

Neal also termed the strip club the "new church" for African-American women in an interview with Duke's alumni magazine. "In some ways this is legitimate labor, and we need to be clear about that," the professor explained. "I don't want to get into the business of policing black women's sexuality."

In the previous days, Neal had been active in campus protests against the lacrosse players. In a statement posted to his blog on April 13, he clearly implied (though with the qualifier "alleged") that this was one of many incidents of "sexual violence related to a college campus" and that it had "racist implications." He added, "Regardless of what happened inside of 610 N. Buchanan Blvd, the young men were hoping to consume something that they felt that a black woman uniquely possessed. If these young men did in fact rape, sodomize, rob,

and beat this young women [sic], it wasn't simply because she was a women [sic], but because she was a black woman." Neal was also apparently unaware that the players never believed the agency would send over black strippers, nor had they desired that the agency do so.

Meanwhile, Kim Roberts received an \$1,875 favor from Nifong—and started telling reporters that she thought the lacrosse players had probably raped Mangum and maybe given her a "date-rape" drug, too. This assertion contradicted Roberts's March 20 statement to Detective Himan that the rape claim was "a crock," as well as her March 22 statement to police. But the reporters did not know about that. Nifong and the police had kept it secret.

On April 17, the day of the lacrosse indictments, Nifong helped reduce Roberts's bond on a charge of violating her probation on a 2001 conviction for embezzling \$25,000 from her employer. This saved Roberts the 15 percent fee that she would otherwise have had to pay a bondsman. Nifong made this move at the request of his new friend Mark Simeon, who represented Roberts and aspired to represent Magnum, too. Simeon was open about his hope of collecting big bucks in a civil lawsuit against lacrosse players. He thus had a financial stake in seeing them convicted.

The very day that she got her favor from Nifong, Roberts dramatically changed her tune about the rape charge. In an article headlined "Involuntary Intoxication," *Newsweek* reported that even as the grand jury was meeting to consider indictments, "the second dancer has come out in support of the accuser, and offers details that suggest the alleged victim may have been drugged."

Simeon, said *Newsweek*, had told the magazine that the accuser was "clearly sober" when she arrived at the party but "appeared to be under the influence of some substance" when she left. *Newsweek* added that "Nifong told *Newsweek* several weeks ago that her impaired state was not necessarily voluntary." The DA had hinted that the lacrosse players had drugged the accuser by putting something into her drink.

Simeon also disputed defense lawyers' assertions that Roberts had never been alone in the house for more than about ten minutes. Perhaps he was unaware that Roberts had told Detective Himan it had been "less than five minutes." That's why she had been so sure that the rape claim was a fraud.

*Newsweek* later reported Roberts's account of her dealings with Durham lawyer James D. "Butch" Williams. After learning of the rape claim, she had gone to Williams for advice. He told her that he represented one of the Duke lacrosse players (Dan Flannery). When Williams asked if she believed there had been a rape, Roberts had said no. According to Williams, who had not yet seen her statement to Himan, the words that Roberts had used were "a crock of shit."

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## BLIND INJUSTICE: INDICTED AFTER PROVEN INNOCENT

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“But when Williams tried to get her to sign an affidavit,” *Newsweek* reported, “she balked. She said she later became livid when she heard that Williams had shared her story with other attorneys. Seeing Williams’s face appear on a TV during her interview with *Newsweek*, she stood up and began punching the air in anger at him. ‘I feel like he preyed on my naïveté,’ she told *Newsweek*. ‘I don’t want someone to play me like I’m stupid.’”

No naïf, Roberts sent an e-mail on April 19 to 5W Public Relations, in New York City. The agency represents rappers, including Lil’ Kim, of whom Roberts said she was a huge fan. Her e-mail said: “Hi! My name is Kim and I am involved in the Duke Lacrosse scandal. . . . Although I am no celebrity and just an average citizen, I’ve found myself at the center of one of the biggest stories in the country. I’m worried about letting this opportunity pass me by without making the best of it and was wondering if you had any advice as to how to spin this to my advantage.”

Dozens of experts on spinning the event to one’s personal advantage were close at hand, of course, sitting on the Duke arts and sciences faculty. But Roberts didn’t know about them.

The agency shared the Roberts e-mail with the Associated Press. When this revelation spurred questions about whether she was trying to profit from the case, Roberts retorted: “Why shouldn’t I profit from it? I didn’t ask to be in this position. . . . I would like to feed my daughter. . . . Don’t forget that they called me a damn nigger. She [the accuser] was passed out in the car. She doesn’t know what she was called. I was called that. I can never forget that.” Roberts did forget something else during her AP interview: that (as she was later to admit to Ed Bradley) she had provoked the lacrosse player’s use of the N word by shouting a racial taunt at him while walking to her car.

“In all honesty, I think they’re guilty,” Roberts told the AP reporter. While “I was not in the bathroom when it happened, so I can’t say a rape occurred and I never will,” she explained, “I have to wonder about their character.” Why so? Because she was upset that defense lawyers had released information about both dancers’ criminal records and photos taken of the women at the party.

Apart from this animus against defense lawyers, Roberts said nothing that confirmed significant details of Mangum’s many accounts, which her statements to police had contradicted on multiple key points. Duff Wilson of *The New York Times* nonetheless reported that Roberts had “corroborated some of the accuser’s details.” In fact the contradictions between the two dancers’ accounts to police were both numerous and stark.

Meanwhile, the Nifong-led police investigation veered from farce to malevolence. The long-delayed, postindictment search of Seligmann’s and

Finnerty's room was a Keystone Kops production. Himan, searching Seligmann's room, began tearing through the belongings of Reade's roommate, Jay Jennison. "Bingo!" Himan exclaimed, when he came across Jennison's cartoon of Reeve Huston saying, "Ejaculation has occurred." Jennison had to call Bob Ekstrand to remind Himan that the warrant gave police no legal authority to search through Jennison's belongings.

Meanwhile, Gottlieb, who was downstairs coordinating the search of Finnerty's room, had his own "Eureka!" moment when he spotted a storage space in the ceiling. Hoping to find evidence he could use against Collin, the rotund sergeant tried doing a pull-up to open the hatch. He got stuck, causing the ceiling to sag slightly. The yield from the search? Some coursework, a lacrosse scouting report, and an iPod.

There was nothing farcical about the April 21 meeting at which Nifong, Gottlieb, and Himan got a more detailed oral report from Dr. Brian Meehan of DNA Security. He told them that the DNA of multiple males had now been found on the pubic hair comb as well as the rectal swabs and panties from the rape kit, and that none of it matched Collin Finnerty, Reade Seligmann, or any other lacrosse player. Nifong and Meehan agreed that Meehan's report would omit this stunning evidence of innocence and thereby conceal it from defense lawyers and the court.

Who were the criminals now?

### 13. NIFONG

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