



Integrity on Deadline: ABC News and the Duke Lacrosse Photographs

In early April 2006, Eric Avram, a senior producer for ABC News, led a reporting team to Durham, North Carolina to cover a controversial, high profile story. A 27-year-old woman, hired as an exotic dancer at a private party for the Duke University lacrosse team, alleged that she had been brutalized and gang-raped in a bathroom by several members of the team. The athletes adamantly denied the charge.

As the story heated up, reporters from across the country closed in on Durham, competing fiercely to unearth new details. Early news reports were, in general, sympathetic to the alleged victim. The case seemed to support claims of a disturbing new trend in competitive college sports—a growing sense of impunity among star athletes. Race and class tensions also featured prominently: the accuser was African American and a single mother of two; the accused, white athletes at an expensive, prestigious university.

In an effort to shift the tide, defense attorneys for the Duke athletes released several pieces of new information, including a set of time-stamped photographs, taken at the lacrosse team party, which appeared to contradict aspects of the accuser's account, especially with respect to the timeline. Avram was angling to obtain copies of these photographs, and thought he had persuaded the lawyers to release them to ABC for an exclusive report before distributing them to other journalists. In fact, the lawyers emailed the photos to him just after NBC News aired them in an early morning broadcast on April 19. But if ABC moved fast, it could still include the photos in its own West Coast morning newscast, due to air in two hours.

Avram wanted to use the photographs and did not believe that to do so would breach the ABC News policies about rape coverage—but he had to admit, the photos fell in a gray area. Under ABC policy, news reports shielded the identity of any alleged rape victim unless he or she

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agreed to go public.¹ One of the lacrosse party photos showed the alleged victim performing an exotic dance, another showed her in a state of apparent intoxication, and a third showed her minutes after she said the rape had occurred, rifling through her purse, showing no obvious signs of distress. Avram thought that ABC could stay true to its policy by blurring the alleged victim's face in the photos (as NBC had done)—but to his knowledge, the network had rarely, if ever, done so in a rape case.

It was also ABC's policy to refrain from publishing details about the life of the accuser—to avoid putting the victim "on trial." Did the photos cross that line? On the other hand, having freely reported the woman's accusations, was it an act of bias against the accused to withhold the photos? Finally, in weighing the question, did it matter that NBC had already made the photos public? At 7 a.m., Avram called Kerry Smith, senior vice president of ABC News and head of its Editorial Quality Office, for guidance. He made a strong pitch for using the photos, but placed the final judgment in her hands. Smith had just one hour to make the immediate decision—whether ABC should air the photos in its West Coast morning newscast.

ABC News

The question about the lacrosse party photos arose at a time when ABC News was struggling to increase its viewership ratings. Like its two network rivals, CBS and NBC, ABC News had steadily lost market share and advertising revenue since the 1980s to newcomers in the television news market—cable news networks like CNN and commercial on-air enterprises like Fox News. Beginning in the 1990s, the picture grew even worse as viewers migrated away from television news altogether and toward the Internet.

But ABC News had suffered a further blow in 2005 with the illness and death, in August, of iconic anchor Peter Jennings. Jennings for 22 years had been the public face of ABC's most-watched news program, "World News Tonight."² As of November 2005, viewership had dropped 10 percent from the previous year.³ Months later, ABC News lost one of Jennings' most promising replacements, Bob Woodruff, badly injured by a bomb while reporting from Iraq.

By the end of 2005, an average 8.9 million viewers watched ABC's nightly newscast, compared to the 10.3 million who watched NBC's "Nightly News" and the 7.8 million audience for the CBS "Evening News."⁴ ABC News executives had responded by shuffling other anchors—less

¹ This case study follows the same policy and does not name rape victims.

² In addition to World News Tonight, ABC News had six news programs, each with its own stylistic and editorial emphasis. "Good Morning America," for instance, focused on special interest and general news; "20/20" on human interest stories; and "Primetime Live" on long investigative pieces.

³ *The State of the News Media, 2006*, Project for Excellence in Journalism, Annual Report.
www.stateofthemediamedia.org. Nightly News' November viewership had fallen 16 percent since 2000.

⁴ Peter Johnson, "ABC Team Makes Formal Debut Tuesday." *USA Today*, January 2, 2006.

famous, but still familiar—from one show to another, but as of the spring of 2006, ratings had not rebounded.

A Question of Standards

The alchemy necessary to achieve high news ratings was complex. In addition to cultivating popular news anchors, the networks had to consistently produce fresh, riveting, reliable news coverage. But network executives had long understood that, with their power to bring potent visual images into the family living room, they had to strike a delicate balance. On the one hand, they had to engage the attention of the viewers; on the other, they had to maintain journalistic credibility and avoid offending viewers with material they were likely to find in poor taste.

This required making careful judgments—well beyond obeying the laws and regulations that governed the press. Federal laws proscribed such flagrant abuses as libel, slander, and inciting riots, and the Federal Communications Commission (FCC) regulated standards for decency on the air (prohibiting expletives or explicit sexual references, for example). But, in a world where a half-point change in the ratings meant huge gains or losses in advertising revenues, network executives had always recognized that they had a compelling commercial motive both to push the boundaries—and to self-regulate. Even before news programming had gained a prominent place on network television, all three networks had established in-house “standards and practices” offices to oversee entertainment programming. For instance, in 1956, CBS faced a classic dilemma. The “Ed Sullivan Show” wanted rising star Elvis Presley to perform on the show—something new and exciting for the viewers at home. But the standards and practices group worried that Presley’s trademark gyrations were too risqué for a family audience. The solution: Presley did appear on the show, but cameramen were instructed to film him from the waist up.

News programming added new dilemmas to this perennial network challenge. As early as 1943, for example, television news producers had made the decision to edit out gruesome images of American casualties in World War II. CBS, the first network to develop a major news presence, is credited with much of the early work in developing standards of practice in television news. Over time, each network news division created its own in-house mechanism for reining in journalistic excesses and addressing the various professional and ethical dilemmas that arose frequently in the course of television news coverage.

At ABC News, there were no formal reporting guidelines until after 1977, when Roone Arledge took over as president of the News Division (he remained president of the Sports Division as well). Arledge issued some procedural guidelines; several policy guidelines followed. But the first vice president for standards, George Watson, was hired only in 1983. Watson took a more systematic approach to creating and communicating guidelines. With help from company lawyers, he codified what ABC expected of its producers and reporters, collecting directives in a loose-leaf

notebook which could be readily updated. The book was distributed to producers, who were responsible for monitoring adherence to the guidelines. Over the years, it was updated as needed.

New unit. In 1995, as programming grew to include two news magazines, a documentary series and other programs, the standards position was elevated and expanded. Arledge appointed Senior Vice President Richard Wald to take charge of the so-called Editorial Quality Office. Wald, with a staff of two, would report directly to Arledge.⁵ In 2000, Kerry Smith took over from Wald. Smith was a 25-year veteran of television news who, over the course of her career, had produced shows for most ABC news programs.

Smith and her four-person team operated in several different ways. For ABC News' long investigative stories, Editorial Quality—together with the network's legal department—served as a final “check,” making sure the show met legal and network standards. As needed, Smith and her team developed and disseminated new policies. For example, in 2005, she issued a memo instructing the news staff to withhold the name and photo of an abducted child if the child was known to have suffered sexual abuse—a matter of protecting the child's privacy.⁶

But reporters and producers regularly encountered complex or idiosyncratic situations not addressed by the written policies. Sometimes they used their own judgment. But when they hit a particularly thorny issue, they called Smith. “We addressed each issue on a case-by-case basis,” Smith says.⁷ “There were no wrong answers... You really have to look at what is the right decision with those set of circumstances in that story.” She adds:

One thing you learn in this job is that the set of circumstances are always different. Other decisions can inform it, and you try to maintain a standard that makes sense in most cases. But not blindly, because something could come up that would change the decision. You would like to be consistent, but there might be something that really would change your mind.

It was Smith's job to make the judgment calls on behalf of ABC News.

By the time the Durham rape case photos crossed her desk, Smith had several years experience heading up Editorial Quality, and had weighed in on a wide variety of questions: How should children be interviewed on television? How much blood should ABC News show in a war zone on the morning news? Four days after the September 11 terror attacks, Smith and Westin had made a particularly controversial decision, over the objection of several producers, that ABC stop

⁵ Wald was a former president of NBC News. He joined ABC as senior vice president in 1979.

⁶ The Amber Alert, a system to rapidly broadcast information about missing children, had been followed by networks since 2002. If ABC found it had broadcast the name and photograph of a child, later discovered to have been sexually assaulted, ABC continued to report the story, but omitted the name and photo.

⁷ Templeton's interview with Kerry Smith on October 6, 2007, in New York City, NY. All further quotes from Smith, unless otherwise attributed, are from this interview.

re-playing video footage of the airplanes crashing into the World Trade Center, and of the collapse of the Twin Towers (although ABC continued to show still photos). It was a matter of “taste, respect for those killed, and concern for children, who were unable to distinguish that this was something that was [not] happening again and again,” ABC News’ Vice President Jeffrey Schneider later told a reporter.⁸ Producers and executives at ABC News were free to challenge Smith, and ABC News President Westin could overrule her decisions. In most cases, however, Smith had the final word.

The Particular Challenges of Reporting on Rape

The issues that arose in reporting on rape and other sex crimes were especially difficult for journalists because of competing privacy and fairness concerns. Like its network counterparts, ABC News had struggled its way to a set of policies with respect to rape coverage over a period of many years—but in the larger journalism world, there was still uneasiness, inconsistency, and controversy over these policies.

Until the 1970s and 1980s, rape victims were commonly named in press reports—their reputations, lifestyles, and sexual tastes laid out for discussion and appraisal. As a result, many rape victims—fearing ruin in the press—kept silent about their attacks. In her 1992 book, *Virgin or Vamp: How the Press Covers Sex Crimes*, Helen Benedict argues that in these years, reporters fundamentally misunderstood rape and fell into the trap of viewing rape victims either as paragons of chastity or as promiscuous manipulators who invited assault.⁹

In the 1970s, the women’s movement fought to change the general understanding of rape. Studies emerged showing that—contrary to the commonly-held view—women seldom fabricated rape charges. Gradually, most print and broadcast media agreed, most of the time, to protect the anonymity of rape victims and to refrain from reporting the details of their personal histories. A rape was a rape, under the new understanding, and had nothing to do with the past conduct of the victim.

New Bedford case. But there were a number of messy cases along the way to this weak and tentative consensus. In 1983, for example, a woman in New Bedford, Massachusetts, reported that she had been gang-raped by a group of men in a pool hall while others stood by watching and cheering. Initial press coverage was sympathetic to the accuser, but by the time the case went to trial, the tide had turned. One local paper identified the accused rapists as Portuguese, triggering anti-Portuguese sentiment in the New Bedford area. This, in turn, set off a backlash in the Portuguese community, which rallied around the accused men, blaming the woman for the incident. Portuguese newspapers began naming the victim and reported that she was a drug user,

⁸ Bryon York, “Taboo: Abu Ghraib Images Are One Thing. But 9/11? Off Limits,” *National Review*, July 26, 2004.

⁹ Helen Benedict, *Virgin or Vamp: How the Press Covers Sex Crimes*. (New York: Oxford University Press, 1992.)

welfare cheat, and promiscuous partygoer who had been “asking for it” the night of the rape. Other papers began to echo this line. Although the trial ended in convictions, the rape victim fled to Florida three days afterward and changed her name, reportedly hounded by violent threats from defenders of the accused.¹⁰

In the wake of this incident, many journalists agreed that the New Bedford victim had been badly served by the press. But high profile cases continued to push the boundaries of policies intended to protect rape accusers. In 1991, when a Florida woman accused William Kennedy Smith, Senator Edward Kennedy’s nephew, of rape, the press initially withheld the woman’s name. But when NBC broke rank and named her, others, including the *New York Times*, followed suit. NBC News President Michael Gartner explained to his staff in a memo that he allowed the network to name the victim because “names and facts are news.”¹¹ The *New York Times* told readers it ordinarily shielded the “identities of complainants in sex crimes,” but that “NBC’s nationwide broadcast took the matter of her privacy out of their hands.”¹²

Name the victim? What’s more, some journalists objected on principle to the practice of shielding the accuser while naming the accused. What about women who made false accusations? Rape charges were often ruinous to the accused. Both should be named—or neither should be named, they argued. Geneva Overholser, former editor of *The Des Moines Register* and distinguished journalist, was a particularly outspoken advocate of naming rape victims. Overholser had been editor of *The Register* in 1991 when it won a Pulitzer Prize for a story about a local rape. In that case, the victim had agreed to go public. During the 2003 rape trial of basketball star Kobe Bryant, however, Overholser named the accuser in a weekly column for the Poynter Institute, a respected journalism education organization, without the woman’s consent. Overholser resigned on principle from the Poynter board when institute leaders pressured her to stop using the woman’s name.¹³ “The media cannot have the wisdom to decide who to protect where there has been no determination of guilt or innocence,” she told a women’s magazine.¹⁴

When the Durham rape case became a major national story, ABC News’ policy with respect to rape coverage was conventional and well-established. For more than 20 years, ABC had consistently withheld the names of alleged rape victims and refrained from reporting details of their lives. ABC had never named the New Bedford victim, and only named Kennedy Smith’s

¹⁰ Parts of this story were recounted in the Jody Foster and Kelly McGillis film “The Accused.”

¹¹ “Naming the Victim,” *Columbia Journalism Review*, July/August, 2001.

¹² Fox Butterfield with Mary B.W. Tabor, “Woman in Florida Rape Inquiry Fought Adversity and Sought Acceptance,” *New York Times*, April 17, 1991. The paper later reversed course and resumed withholding her name because “editors came to believe that her privacy was being effectively shielded.”

¹³ The Bryant case had moved out of criminal and into civil court, and many news outlets had named the victim. They argued that as a plaintiff in a civil case she had crossed over into a more public realm, and should therefore be identified. There was also the point that her name could be easily found online, due to the release of identifying documents by the court on three occasions.

¹⁴ Robin Hindery, “Debate on Naming Rape Victims Continues,” *Women’s eNews*, September 24, 2004.

accuser when she went public herself, seven months after trial, to give her side of the story. (At that point, the woman gave ABC News an exclusive interview on “Primetime Live.”)

The Duke Incident

The first report of the alleged rape in Durham appeared on March 18, 2006, in the local newspaper, the *News and Observer*. The three-line story stated that police were investigating a possible rape near the Duke University campus on March 13. Details about the incident remained scant, in fact, until March 24, when the *News and Observer* broke the news that police were investigating Duke’s lacrosse team in connection with the alleged assault. The team was ranked second in the nation at the time.

The basic outline of the story soon emerged. The captains of the Duke lacrosse team had hosted a party in an off-campus house on the evening of March 13, and had hired two exotic dancers from a local escort agency to perform. The women, both African-American, arrived shortly before midnight to a houseful of male college students, many drunk and rowdy. The women began dancing, but when several of the youths yelled racially insensitive remarks, the dancers left the house. After one student apologized, however, the women returned to the party.

The accusation. The alleged victim—a 27-year-old single mother of two and student at nearby North Carolina Central University—told police that several partygoers grabbed her around the neck when she reentered the house. She said she was separated from the other exotic dancer, and that several men—all white—dragged her into a bathroom, where they raped, beat and choked her over a 30-minute period. The woman said the attack was so brutal that several of her nail extensions tore off as she clawed at the men’s arms.

A neighbor reported seeing the two young women leave the house at about 12:45 a.m. and said some of the lacrosse players had yelled insults. Nearly an hour later, a police officer reported an “intoxicated or disoriented” woman, later identified as the alleged rape victim, passed out in a vehicle in front of a 24-hour grocery store. The woman’s boyfriend reportedly arrived and drove her to Duke Medical Center, where she told hospital staff she had been gang raped by lacrosse players. A nurse examined the woman and indicated she had injuries consistent with a sexual assault. Hospital staff called in the police.¹⁵

The investigation. Police obtained a search warrant on March 16 and removed evidence from the lacrosse house, including acrylic fingernail extensions from the students’ bathroom. The following week, Mike Nifong, District Attorney for Durham County (North Carolina’s 14th Prosecutorial District), ordered 46 of the 47 lacrosse team players to submit DNA samples to

¹⁵ Court documents with the woman’s account can be viewed at TheSmokingGun.com: <http://www.thesmokinggun.com/archive/0329061duke4.html>.

investigators.¹⁶ The DNA tests would take weeks to process. Meanwhile, Nifong assured the public he would take a hard line against the players and bring the assailants to justice. “We cannot tolerate this kind of behavior here in Durham,” he said on March 28, as he looked directly into television cameras.¹⁷ That same night, a Tuesday, Duke University President Richard Brodhead suspended the lacrosse team from playing. By this point, the story was attracting national attention.

The Duke lacrosse players hired attorneys and steadfastly protested their innocence. The team captains admitted to serving alcohol at their party and hiring the exotic dancers. But they consistently denied that any sexual activity, consensual or otherwise, had taken place with the alleged victim.

ABC Coverage

ABC’s Durham affiliate, WTVD-TV, first reported the story on March 24, when the *News and Observer* linked the gang rape investigation to the lacrosse team. When Nifong ordered the DNA samples, WTVD assigned its own reporter to the story. On March 26, producers at ABC News’ headquarters elevated the Duke story to the national level. “World News Tonight” aired a 28-second summary of the investigation near the end of its program and ABC’s website, ABC.com, began to post stories about the investigation in its sports section. On March 27, ABC.com featured a story that described the decorated lacrosse team as “shaken” by recent events.

National significance. By March 29, the alleged Duke lacrosse team gang rape had become a major national story in both print and broadcast media. All three networks carried the story on their evening broadcasts. *The Washington Post* and *USA Today* each featured a story about the Duke case on the front of the sports section. *The New York Times* reported the story on its front page on March 29 and 30.

To many reporters and producers, the incident underscored broader issues. Some questioned whether a moral breakdown was taking place in male-dominated college athletics, citing recent charges against other university sports teams: seven separate rape charges leveled against University of Colorado football players in 2004; and a gang rape charge made against members of the University of Tennessee football team in 2005. On March 29, 2006, “World News Tonight” anchor Elizabeth Vargas introduced a three-minute update of the Duke story by asking pointedly whether college athletes had come to feel “above the law.”

As the story developed, journalists began to focus on the race and class divides in Durham between Duke University and the local community. Durham’s population was 45 percent African

¹⁶ One member of the team was black and not tested for DNA, since the woman had said her attackers were white.

¹⁷ Interview with Rita Cosby, MSNBC, March 28, 2006.

American; Duke's student body was 11 percent African American. Durham's median household income was \$43,000—roughly equivalent to one year's tuition, room and board at Duke. Within Durham, African American activists began to publicly criticize D.A. Nifong and the local police for what they called a sluggish response to the rape. Had the victim been white, they argued, arrests would have been swift. Nifong denied a double standard. On March 29, he told reporters that he not only felt certain a rape had occurred, he also believed it had been fueled by racism: "The circumstances of the rape indicate a deep racial motivation for some of the things that were done."¹⁸

On April 1, public criticism turned to public outrage. Hundreds of protesters marched through the Duke campus carrying banners. "Real men don't protect rapists," stated one. Activists taped "Wanted" posters across campus that featured photographs of the lacrosse players and exhortations to admit their crimes. Outside the lacrosse house, crowds of protesters banged pots and pans and decried crimes against women. At night, activists held candlelight vigils in support of rape victims. On April 5, Duke President Brodhead canceled the team's season.

Enter the ABC "Law and Justice" Unit

In light of this escalation, the senior vice president for news at ABC News assigned primary reporting responsibility for the Duke story to the division's "Law and Justice" unit, one of several specialized reporting teams.¹⁹ Historically, the unit numbered from five to nine members, many of them former lawyers. They covered a range of stories, from high profile crimes and terror attacks to legally complex Supreme Court rulings. The unit's reports were included in ABC's national newscasts—in particular, "World News Tonight" and "Good Morning America."

The head of the Law and Justice Unit was Eric Avram, a senior producer who had spent 13 years moving up the ranks at ABC News after an early career as a Wall Street lawyer. During his tenure at ABC, Avram had covered some of the network's biggest stories, including the 1996 crash of Paris-bound TWA Flight 800 shortly after takeoff in New York, and the 1999 massacre at Columbine High School in Colorado. He had won a Peabody Award for his role in ABC's coverage of the September 11, 2001, terror attacks. Avram relished the competitive aspect of television news coverage. "If I was working on a story, what drove me was getting the best story possible—plus beating our immediate competitors," he says.²⁰

Off to Durham. Avram and a team flew from New York City to Durham on April 3. The group quickly fanned out to gather whatever new information they could about the unfolding

¹⁸ "Rape Allegations Cloud Duke Lacrosse," CBS News, March 29, 2006.

¹⁹ Other units specialized in topics such as health, sports, entertainment, technology and investigations.

²⁰ Templeton's interview with Eric Avram on October 13, 2007 in New York. All further quotes from Avram, unless otherwise attributed, are from this interview.

investigation. Like other journalists assigned to the story, the Law and Justice Unit was impatiently awaiting the results of the DNA tests, which were expected to point to one or more specific culprit. Meantime, like their competitors, they were under pressure to advance the story in other ways. "It was a frantic scramble," recalls Lara Setrakian, a reporter on Avram's team. "[We] would be sitting in [a lawyer's] waiting room... and Dan Abrams [of NBC] and their production team would also be there... Everyone's obviously fishing from the same pond."²¹

For two weeks, beginning April 4, at least one ABC news program a day featured a story about the Duke case. On April 5, "World News Tonight" reported that the lacrosse team coach had resigned following publication of an email written by one lacrosse player the night of the party, in which he spun out a fantasy scenario that included "killing" a stripper. That evening, the ABC news magazine "Nightline" ran a special segment on the email. Avram's team ran a criminal check of each lacrosse player; on April 7, "World News Tonight" reported that 15 of the 47 lacrosse players had been in minor trouble with the law.

The DNA Results

The results of the DNA tests were finally made public on April 10: the tests had failed to link any of the lacrosse players to the alleged rape victim. Avram expected the District Attorney to abandon the case at this point, but Nifong insisted that even without a positive DNA match, he still had enough evidence to move forward with an indictment. The alleged victim could now recall details of the rape with more clarity, he said, and had identified her attackers from photographs of the lacrosse team. "Any time that you have a victim who can identify her assailant... you have a case that the judge must let go to the jury," Nifong explained to a forum at North Carolina Central University on April 11.

At this point, however, news coverage of the alleged rape grew more skeptical. For one thing, Nifong's motives came under scrutiny. The district attorney was in the midst of a heated re-election campaign and had staked a great deal on the Duke case. He had decided to prosecute the case himself rather than assign it to another attorney in his department. He had also served as the primary spokesperson for the D.A.'s office. On several occasions, he had told reporters he was "confident that a rape had occurred" and described the lacrosse players as "hooligans"²² whose "daddies could buy them expensive lawyers."²³

Shifting blame. Lawyers for the lacrosse players expressed outrage at Nifong's decision to pursue the case without DNA evidence to support the accuser's claim. "There is no evidence other

²¹ Templeton's telephone interview with Lara Setrakian on October 19, 2007. All further quotes from Setrakian, unless otherwise attributed, are from this interview.

²² Benjamin Niolet, "Spotlight is New Place for Nifong," *The News and Observer*, April 10, 2006.

²³ Sal Ruibal, "Assault Scandal Highlights Divide for Durham, Duke," *USA Today*, March 30, 2006. http://www.usatoday.com/sports/college/lacrosse/2006-03-30-divisions-at-duke_x.htm

than the word of this one complaining person that any sexual assault took place,” remarked one of the attorneys.²⁴ In response, the defense team took the gloves off and went public with information intended to discredit the accuser. They told television crews outside the courthouse that she had been arrested for stealing a car and leading police on a high-speed chase three years earlier. She had been drunk, they continued, and had spent six days in prison.

In fact, Avram and his team had learned about the accuser’s criminal background soon after arriving in Durham. The information was common knowledge among reporters on the scene. In keeping with the widely-held policy to refrain from putting an alleged victim “on trial” by reporting unsavory details about her life, no major news outlets—ABC included—had previously chosen to report this information. But when the defense lawyers released the information in the form of a public statement, some networks did air it. ABC did not, choosing to stay with its policy.

The Photos

At the same time, sources sympathetic to the defense decided to show a small group of reporters a set of photographs from the March 13 party, taken by one of the partygoers. Rumors about such photos had been circulating for weeks, but no journalists had seen them. On the afternoon of April 10, a few reporters—from ABC, NBC and *Newsweek*—congregated outside a conference room at the Durham courthouse. They were called in, one at a time, to view the images. The photos were not, however, released for publication.

A thousand words. When their turn came, Avram and his team trooped into the conference room, where they looked at 12 time-stamped photographs. The images showed the living room of the lacrosse house with three couches in a semicircle, the two exotic dancers performing in the center. Some images showed the women dancing while students drank and horsed around—but they did not show any sign that the youths reached toward the women or touched them. In fact, some of the partygoers appeared to be talking among themselves and paying little attention to the dancers. The sources argued that this contradicted the accuser’s claim that the students had grown “excited and aggressive” during the exotic dancing. In one photo, taken at 12:34 a.m., minutes after the alleged victim had said she was raped, she was shown rifling through her purse and—the defense believed—smiling. Another, taken minutes later, showed her lying on her side on the porch, apparently passed out.

The sources pointed out several other ways in which the photos seemed to belie prosecution claims. For instance, Nifong had said no DNA had been found under the woman’s fingernails because the students had been wearing long-sleeve shirts and jackets that protected their arms. But the photos showed all the partygoers wearing short-sleeved shirts. Also, the photos

²⁴ John Stevenson, “Lawyers: DNA tests show Duke players innocent,” *Herald-Sun* (Durham, NC), April 11, 2006, p. A1.

showed that the alleged victim had arrived at the party with bruises and scrapes, casting doubt on her claim that she sustained significant injuries while there. The reporters were not shown any photos time-stamped between 12:03 a.m. and 12:30 a.m., the period during which the woman claimed she was raped.

Avram was not sure what to make of the images—"I was still completely agnostic," he says. On the one hand, they disputed the woman's reported timeline. But Avram felt there was a good chance that, if she had been raped, she had become disoriented and confused about the exact timing of events. Nor was Avram convinced the woman was smiling in the photo taken at 12:34. The images were of low quality and her expression—was that a smile or grimace?—was difficult to interpret. Even if she was smiling, Avram thought, it did not mean she had not been raped. And Avram found the half-hour break in the photos' sequence suspicious.

On the other hand, Avram believed the photos represented a major break in the story and wanted to get them on the air. Avram asked the sources if ABC could have the photos for an exclusive report, before they were released to other networks. In the world of broadcast journalism, it was common for reporters to ask their sources for this kind of "exclusive," and sources tended to bestow such favors judiciously. "[An exclusive] was kind of a public recognition that you did a good job," Avram says. In fact, the sources did agree; they promised to send Avram the photos in a few days.²⁵

Indictments. In the meantime, on April 17, a grand jury handed down indictments against two sophomore lacrosse players—neither of them the team captains, who had been the apparent focus of the investigation early on. Nifong said he expected a third student to be indicted in a few days, and hinted that a second round of DNA tests would follow. At 6 a.m. on April 18, television cameras captured the handcuffed 19-year-olds arriving at the Durham jail where they were charged with first-degree forcible rape, sexual offense and kidnapping. They posted \$400,000 bond and were released to await trial.

ABC and other news organizations quickly shifted gears to report on the students' affluent East Coast backgrounds. Television broadcasts showed manicured lawns in the wealthy suburban neighborhoods of New York and New Jersey where the suspects had grown up. Lawyers for the accused, meanwhile, insisted that the party photographs—combined with taxi receipts, bank photos and other records—would show that at least one of the youths had not even been at the party when the woman said she was attacked.

Scooped

At 6 a.m. on April 19, Avram and a crew were standing in front of Duke Cathedral, a dramatic building and popular backdrop for television broadcasts. Reporter Chris Cuomo was

²⁵ Avram has not named his sources.

preparing to report live for “Good Morning America.” The team felt good about the story they were about to air. Using what they had seen of the photos, combined with other information about the case, they had created a minute-by-minute timeline of the party. Avram expected his sources to give him the photos later in the day, which would dramatically enhance the timeline story.

Just as the team was about to go live, however, Avram received a message on his Blackberry [TM] that NBC’s “Today Show” already had the photographs. “We had been falsely confident,” Avram says. While Cuomo went on the air with ABC’s report, NBC broadcast the photos for the first time, with the face of the alleged rape victim blurred—a common technique for shielding a person’s identity. Just as Cuomo went off the air, Avram received a new message on his Blackberry: an email from his sources, with the photos included as an attachment.

What now? Avram had only minutes to make his next decision: should he unilaterally choose to air the photos? Avram was in North Carolina; West Coast news producers were still assembling their morning program. Avram could provide the photos for the West Coast feed of “Good Morning America”; that way, ABC could share the photo scoop with NBC in the West Coast market. As a second option, if he sent the attachments to ABC.com, the website staff could post them online in a matter of minutes. Avram doubted that anyone would challenge his judgment if he pursued either of these scenarios. But a slight sense of unease made him hesitate.

ABC policy—and his own moral convictions—called for withholding a rape accuser’s identity unless she chose to go public. To show a photograph of the accuser with her face blurred did not breach this policy, in his own mind, but on the other hand, he did not think ABC had ever done it before. He could see that others might argue the question differently.²⁶ Avram also knew that opinions might differ about whether the news value of the photos outweighed their unsavory content, or the fact that they showed the alleged rape victim in an unflattering light. In general, ABC News policy prohibited putting a rape victim “on trial.” Did a photograph that showed her performing an exotic dance, or in a state of apparent intoxication, cross that line? Avram believed that, under the circumstances, the answer was no. But he also knew he was exhausted from a string of 20-hour reporting days, and did not entirely trust his own clarity of thought.

Whenever an ABC news producer faced a concern of this kind, s/he was supposed to call Smith, head of the Editorial Quality Office, for guidance. At 7 a.m., Avram reached Smith on her cell phone, explained the situation, and sent her the photos.

²⁶ At least one member of his own team, Lara Setrakian, on her first major assignment for ABC, expressed another concern: the photos revealed the identity of young men at the party, who might be tarnished by association. “There were young reputations at stake,” Setrakian says. “The photos were kind of seedy and my gut asked, ‘What do we really achieve by showing [them]?’”

Smith's Decision

Smith's first question was whether Avram was absolutely certain the photographs were legitimate. Yes, he told her. An expert hired by the defense team had confirmed the images were real, and had been taken in the order indicated by the time codes. In addition, a student who appeared in several frames wore a watch that showed times consistent with the photographs' timestamps.

Avram's arguments. Avram then made the case to Smith for using the photographs. With respect to ABC's rape coverage policy, Avram thought he was on solid ground. Once they took pains to blur the woman's face, the photos would actually do less to reveal her identity than the brief verbal description ABC was already using, he argued. "When you say she is a single mother of two who went to this college... you've done 500 times more identifying of her [than the photos]," Avram says. "The photos didn't identify her at all."

Nor did the photographs reveal anything about the alleged victim that was not already public: she was an exotic dancer and she had attended the party. "We know that," Avram said to Smith. What's more, these photos did pertain to the question of whether a rape had occurred that night. "I [didn't] think the photos were necessarily conclusive," Avram says, but—especially in the absence of DNA information—they represented "a major piece of evidence in the case—you couldn't ignore them."

In addition, Avram believed the photos strengthened his team's reporting. "We were doing a story about the timeline and we had pictures that purported to [show] the timeline," Avram recalls thinking. "Why wouldn't we use them?... The whole reason we were trying to get them was to use them. It wasn't not to use them." What's more, there was a commercial consideration that should not be ignored, he says: the photographs contextualized the story and made for compelling viewing. "It had become irrelevant to say our story had more information," he says. "What people would remember were the pictures."

Finally, Avram concluded, after freely reporting the claims of the accuser for weeks, ABC had an obligation to show legitimate evidence produced by the defense that cast doubt on her story. To do so was not to play into the hands of the defense lawyers, he argued; it was simply fair-minded.

Making the call. Smith listened to these arguments and then threw a few additional considerations into the mix. ABC generally did not broadcast information that might discredit a possible rape victim. But the case was unusual. For one thing, it was starting to look as though the accuser might have fabricated the story. Deciding that question was a matter for the police, or the courts. Still, did ABC have some kind of moral duty in this circumstance to stand by the accuser's version of the story unless it was proved false in court?

Then there were the photos themselves, which Smith found “tawdry.” She believed that while the photos were not irrelevant to the case, neither were they conclusive. How much did they add to the substance of the story—and were they, in the end, more voyeuristic than newsworthy?

Smith was also less sanguine than Avram about whether blurring the accuser’s face in the photographs would truly protect her identity. If ABC aired such photos in this instance, would other rape victims in the future view the network as untrustworthy? “I think it’s very difficult to change your mind when you’ve first made a determination that you’re going to protect someone,” Smith says. “The next person you talk to will remember that.” On the other hand, NBC had already publicized the photographs. The images were in the public domain, part of the collective story, and would be readily available online.

Smith reviewed her options. She could shelve the photos entirely. She could approve their use in the West Coast morning broadcast—and thus make sure NBC did not have a photo exclusive in that market. She could buy herself a little more time to consider the matter—withholding permission to air the photos in the morning newscast, but preserving the possibility of doing so that evening on “World News Tonight.” Or she could allow ABC.com to use them online, while keeping them off the broadcast. She had one hour to make her decision.

