CHAPTER NINE

When Prosecutorial Discretion Meets Disaster Capitalism

Lenese Herbert

"Many heroic actions and chivalrous adventures are related to me which exist only in the regions of fancy."

She never called 911, nor told the same story twice. For weeks, she failed to identify accurately her purported assailants or their specific deeds. She had no bruises, no tearing, nor bleeding; she was virtually free of signs of a violent sexual assault, including the DNA of the accused. She never quite pieced together all of what she said in a coherent, consistent fashion, no doubt a result of her history of, among other things, substance abuse and psychological problems.

4. See supra Chapter One (Luck & Seigel), at 8, 12.
5. TAYLOR & JOHNSON, supra note 3, at 84–85; Officer Describes Woman in Duke Case as Drunk, supra note 3, at D7.
6. Crystal Mangum may suffer from some sort of bipolar disorder. Several observers have opined, for example, that Mangum may have believed her ever-shifting accounts about what happened that March night. See, e.g., Thom Weidlich, When the Truth Was Violated, NEWSDAY, Sept. 23, 2007, at C27 (criticizing authors Taylor and Johnson for "[d]ownplay-
Nevertheless, in her, he saw promise. She presented an unexpected potential windfall, a timely opportunity to radically reconfigure what otherwise would have been his certain political and professional defeat. Her case overlapped his election campaign, which had not only stalled, but was significantly threatened by a popular rival and a newly recruited challenger. So, he used her. He mined her anger, confusion, and image, straddling her trope, “push[ing] the window of opportunity that opened up after the shock of alleged gang rape. He seized upon her story—a poor, single, young Black mother sexually assaulted by privileged, wealthy, White lacrosse players—flung it into the public sphere for community consumption, and made her reported violation the focus of his political campaign. Her community had already been ignored. Via this horror, it was now savaged. Suddenly, the Black vote was now up for grabs.

The unusual combination of factors that brought together District Attorney Mike Nifong and Crystal Mangum can obscure what actually occurred in the Duke lacrosse case. Although many commentators have weighed in on the seemingly bizarre and blatant bungling of Nifong, as well as his dénouement, few have spoken directly to the methodology of his intent.

7. See supra note 2, at 1338 (opining that Mangum's story was “either a hoax or ... based on delusion”); Craig Jarvis, Mangum's Life: Conflict, Contradictions, News & Observer (Raleigh, N.C.), Apr. 13, 2007, at 1A (noting Mangum's multiple contacts with mental-health providers and facilities). Presumptions regarding Mangum’s mental health also may account for why, when faced with the opportunity, North Carolina Attorney General Roy Cooper declined to prosecute her. See id.

8. See id. at 22 (“I'm not going to allow Durham's view in the minds of the world to be a bunch of lacrosse players at Duke raping a black girl from Durham.” (quoting Mike Nifong)).
Mike Nifong’s recognition and nearly successful exploitation of Mangum to further his self-interest over and above the rights of the players and the public constituted an unfettered, unchecked rush to accuse falsely in order to prosper personally. In other words: the Duke lacrosse case is a primer in disaster capitalism.14

Prosecutorial Discretion

The job of the prosecutor is often misunderstood. The public regards prosecutors as public servants hired to throw people in jail, seek guilty verdicts, and win criminal convictions at all costs. This is incorrect. A prosecutor is, foremost, oath-bound to do justice. That is as it should be, as prosecutors are considered by many to be the most powerful public officials in the American criminal-justice system, given their ability to determine and control the initiation, direction, conclusion, or dismissal of criminal cases. Prosecutors truly make life-and-death decisions for the myriad individuals who come to their professional attention through alleged criminal wrongdoing.15

A significant portion of the prosecutor’s power arises from the ability to make numerous unchecked and unreviewable decisions about cases for which they are responsible. This power is called prosecutorial discretion. Prosecutors exercise their discretion in the charging decision (which, above and beyond...}

Files From Duke Rape Case Give Details But No Answers, N.Y. TIMES, Aug. 25, 2006, at A1 (calling the episode “yet another painful chapter in the tangled American opera of race, sex and privilege”); Dick Meyer, The Devils at Duke, CBSNews.com, Apr. 6, 2006, http://www.cbsnews.com/stories/2006/04/06/opinion/meyer/main1480683.shtml (drawing on dichotomies of “Black and White, town and gown, rich and poor, privilege and plain, jocks and scholars”); David Whitley, Ex-Duke Coach Is the Fall Guy in Lacrosse Scandal, ORLANDO SENTINEL, Jan. 25, 2007, at D1 (“Preppy Duke and privileged white boys were inviting targets.”); Mosteller, supra note 2, at 1337 (characterizing the case as “a disaster” and a “caricature”; also quoting North Carolina State Bar Chair, Lane Williamson, who described the case as “a fiasco”).


15. See Brady v. Maryland, 373 U.S. 83, 87 n.2 (1963) ("[T]he Government wins its point when justice is done in its courts" (quoting Judge Simon E. Sobeloff, a former solicitor general)); see also Berger v. United States, 295 U.S. 78, 88 (1935) (noting the "peculiar and very definite" status of prosecutors as servants of the law); Mosteller, supra note 2, at 1366 ("[Nifong’s role is] a minister of justice ... whose most important duty and responsibility is to seek justice, not merely to convict” (quoting North Carolina’s Doug Brocker, the lead prosecutor in the Nifong disbarment proceedings)).
law enforcement's power to arrest, officially places the individual into the criminal-justice system), the grand-jury process (which is solely the province of the prosecutor), plea bargaining (which the prosecutor may initiate, entertain, or foreclose), jury selection, trial strategy, and recommendations for sentencing. Prosecutorial discretion can be influenced by considerations both significant (for example, an uncooperative or unreliable witness, fairness, weak or compelling evidence, or an alternative disposition) and insignificant (for example, a chief prosecutor's pet peeve or campaign promise, office workload, triviality of the property damage or loss, defendant remorse, identification or empathy with the defendant or victim, or the collegiality (or lack thereof) of opposing counsel).

Prosecutorial discretion is necessary to the smooth operation of the criminal-justice system on both the federal and state levels. With it, prosecutors are free to decide who and what should be charged, based upon social, evidentiary, economic, and political considerations—weighed, of course, against the legislature's determination that certain behaviors should be punished as criminal. Just as police officers possess the power to decide whom to investigate and arrest, and judges possess the power to decide who, pending trial, shall be held, receive bond, or be released on their own recognizance, prosecutors must have the power and freedom to disburse individualized justice when and where necessary. Justice demands consideration of individual facts and circumstances; not all criminal defendants, victims, witnesses, and societal harms are the same, even when the criminal code affixes the same name to the alleged criminal conduct.

Prosecutors have been granted the power and responsibility to enforce the law. They are regarded and treated as experts in that realm and are presumed to act in accordance with their duty and its obligations. The Supreme Court expects that prosecutors receive deference in the exercise of their judgment, including discretionary decisions, as interference with prosecutorial duties will almost-certainly interfere with criminal-law enforcement.

16. Professor Angela J. Davis reminds us that there is no law that requires a prosecutor to charge an individual with criminal conduct. The decision to do so, then, makes the decision to charge "the most important prosecutorial power and the strongest example of the influence and reach of prosecutorial discretion." Angela J. Davis, Arbitrary Justice 23–24 (2007).

17. See id. at 13–14 (noting that significant differences in the facts of each case should be considered in prosecutorial decision-making in order to effect a just outcome for a diverse group of criminal defendants).

18. See id. at 127 (citing Rose v. Clark, 478 U.S. 570, 582 (1986)). One commentator has characterized the standards for obtaining discovery of evidence that may prove prosecutorial misconduct as "nearly impossible." Moreover, even when such a standard is met...
This broad discretion rests largely on the recognition that the decision to prosecute is particularly ill-suited to judicial review. Such factors as the strength of the case, the prosecution’s general deterrence value, the Government’s enforcement priorities, and the case’s relationship to the Government’s overall enforcement plan are not readily susceptible to the kind of analysis the courts are competent to undertake. ... Examining the basis of a prosecution delays the criminal proceeding, threatens to chill law enforcement by subjecting the prosecutor’s motives and decision-making to outside inquiry and may undermine prosecutorial effectiveness.19

Prosecutorial discretion has its fair share of critics. According to these critics, prosecutorial discretion is unlike that exercised by others in the criminal-justice system because public challenge or criticism of it is virtually nonexistent. This is becoming even more problematic, as the breadth of subjects over which prosecutors may exercise their discretion continues to increase, while the public’s pressure on prosecutors to obtain more convictions and seek harsher penalties only seems to intensify. This combination is even more alarming when one is forced to reckon with the fact that all prosecutors do not always make decisions that are “legal, fair, and equitable.”20

One might hope to draw more comfort in the case of elected prosecutors because, ostensibly, they are answerable to voters. Conventional wisdom holds that popular elections serve as a public check on prosecutorial power and guarantee some prosecutorial accountability. Moreover, prosecutors elected by popular vote are not beholden to political rainmakers or forced to curry favor with their jurisdiction’s high court or governor. Instead, elected prosecutors are largely and near-exclusively accountable to “the people.”21

Unfortunately, electoral accountability has proven a mirage. Electing prosecutors (as opposed to appointing them) actually reinforces unchecked prose-

and evidence is discovered, judicial review of the prosecutorial conduct shall be “extremely limited” and assessed under the “harmless error” standard—courts should not set aside convictions if the error was harmless beyond a reasonable doubt. 19. Wayte v. United States, 470 U.S. 598, 607 (1985).
21. See id. at 10–12, 163–77 (noting the failure of the electoral process to expose, much less check, prosecutorial discretion).
cutorial power, independence, and discretion. Although voters dissatisfied with their prosecutor may vote him or her out of office in the next election cycle, under the best of circumstances, such efforts tend to lose import and potency because they are untimely. Besides, decisions marred by inappropriately exercised prosecutorial discretion are often carried out behind the scenes and are usually discovered too late for effective action, if they are discovered at all.22

Concern regarding abuse of prosecutorial discretion is seldom based on a prosecutor's use of that discretion to effect a positive outcome for a defendant. Rather, the concern usually stems from prosecutorial decisions that impact criminal defendants negatively, given that useful standards, meaningful guidelines, effective penalties, and official accountability for prosecutors is generally lacking in our criminal-justice system. Specifically, prosecutorial discretion is criticized when it is morphs into prosecutorial abuse and prejudices the accused, who often has little or no opportunity to hold the prosecutor's power in check. Discerning how a prosecutor's various decisions were made is often an impossible task. Seldom is there a consistent, standardized methodology, explanation, or record.

When one takes into consideration the natural—some may even say mandated—competitiveness of the American criminal-justice system and criminal-trial work, as well as the challenge of thwarting prosecutors who intentionally exploit their discretion and power to engage in illegality, the task of checking that discretion is more daunting still. If even well-meaning prosecutors exercise their discretion in ways that produce unfair results, one can only imagine what ill-intentioned prosecutors are able to do, particularly because misconduct and abuse are rarely uncovered or punished.23

Disaster Capitalism

Disaster capitalism has been defined by investigative journalist, author, and filmmaker Naomi Klein, as one or more "orchestrated raids on the public sphere in the wake of catastrophic events, combined with the treatment of disasters as

22. See id. at 14–16 (citing the Wickersham Commission's criticism and others regarding the absence of a "meaningful check" regarding prosecutors' discretion, as well as the ineffectiveness of elections in this regard). Davis speaks generally of the failure of the electoral process to check or make more visible prosecutorial discretion. See id. at 163–177.

23. See id. at 17 (identifying the problems of prosecutorial discretion even when prosecutors attempt only to "do justice"); see also id. at 140–41 (criticizing prosecutorial career advancements and rewards as improper and positive reinforcements for "arbitrary, hasty, and impulsive" decisions that may lead to high conviction rates, but are derived without accountability or supervisory input).
exciting market opportunities." The capitalistic opportunity arises because the disaster puts the entire population into a state of collective shock, allowing a corporate-supremacist ideology to pave the way for private interests to maximize for-profit disaster gains. According to University of Chicago economist Milton Friedman, the father of disaster capitalism, "only a crisis—actual or perceived—produces real change. When that crisis occurs, the actions that are taken depend on the ideas that are lying around." In other words, once a disaster such as a war, earthquake, or terrorist attack occurs, disaster capitalists act quickly to impose "rapid and irreversible change before the crisis-wrecked society slip[s] back into the tyranny of the status quo." According to Friedman, since people are more susceptible to suggestion from leadership during a crisis and take some time to regain their post-shock emotional and intellectual bearings, politicians and their advisors should take advantage of the moment to push through all painful policies at once. This indispensable tactical nostrum may be regarded as the "Shock Doctrine." Although the shock does not have to be violent to disrupt or disorient, it must be traumatic. Additionally, subsequent shocks (such as harsh or widespread human-rights violations and physical torture) may need to be administered in order to break any remaining resistance to private interests blocking the public will. In sum, when the citizenry is suffering, it is ripe for manipulation.

When disaster capitalism is discussed, most often the focus is upon private corporations and their reengineering of foreign countries, societies, and communities that are still reeling from shocks such as war, natural disaster, or terrorist attacks. Typically, disaster capitalists take advantage of public vertigo to pick the mental locks of public resistance to achieve private gain, most often by privatizing what had been state functions. Disaster capitalists have no interest in repairing what was. Harnessing societal shock for private, personal gain is the goal.


26. See Klein, supra note 25, at 6.

27. See id. at 10; see also Faludi, supra note 1, at 64 (discussing the frailties of hero-worshiping in the face of cultural crisis and created narratives that are, at bottom, false).

28. See Klein, supra note 24, at 17 ("Like the terrorized prisoner who gives up the names of comrades and renounces his faith, shocked societies often give up things they would otherwise fiercely protect.")
There are a number of historical examples illustrating the intersection between a megadisaster (for example, a coup, regime change, or foreign war) and corporate superprofits. General Augusto Pinochet’s September 11, 1973, defeat of the sitting, democratically-elected Chilean government by violent coup is a classic example. On its own, the coup shocked Chileans, who had enjoyed an overwhelmingly peaceful 160 years of democratic rule. In the days immediately following the initial coup, however, Pinochet administered additional shocks to the newly disoriented and politically kidnapped citizenry, including arresting approximately 80,000 civilians, thousands of whom “disappeared.” He also authorized death squads, which publicly executed hundreds of high-profile prisoners throughout the countryside and freely “exhibited” their ravaged bodies, many of which ended up bloated and floating in canals. The message was delivered; the country was officially “shocked.”

The cowed citizenry was now amenable to economic shock-therapy. The radical and comprehensive capitalist transformation was based on privatization, deregulation, and skeletal social spending. State-owned companies, banks, and speculative-finance firms were privatized; imports were encouraged; price controls were removed; probusiness policies with the goal of complete free trade were enacted. Subsequent economic shocks were administered that required the eschewing of governmentally imposed economic controls or intervention in the free market’s reign. Disaster capitalists and their fans regarded the massive overhaul of Chile’s economy and government during the post-shock “democracy-free zone” as a great success and model of societal transformation.

Disaster capitalism has been carried out domestically as well. Recently, the United States witnessed two examples of disaster capitalism at work: (1) during the aftermath of Hurricane Katrina, and (2) during the aftermath of 9/11. Mere months after the disaster of Hurricane Katrina and, specifically, the failure of the levees in New Orleans, the New Orleans public school system was among the infrastructure that was in a state of utter destruction. In the finest tradition of disaster capitalism, Friedman virtually demanded “an educational land grab.” He noted the “tragedy” of the destruction of the New Orleans

29. See generally id. at 75–273 (detailing disaster-capitalism efforts in, among other places, Chile, Bolivia, China, and South Africa).
30. See id. at 76–77.
31. See id. at 77–78 (identifying Friedman’s work as bearing a “striking resemblance” to “The Brick,” the radical free-market economic counterrevolution).
32. See id. at 131 (citing Great Britain’s Margaret Thatcher’s praise of Pinochet’s “remarkable success … [regarding] the Chilean economy”).
33. Educational Land Grab, RETHINKING SCHOOLS, Fall 2006, http://www.rethinkingschools.org/archive/21_01/grab211.shtml. One observer described it as follows:
school system and its lack of children; however, he also characterized the crisis as "an opportunity to radically reform the educational system." Shortly thereafter, the New Orleans public-school system was, in fact, auctioned off with lightning speed and replaced in its entirety by privately owned and operated charter schools. The teachers' union was disbanded; its entire membership was fired. Crowing about the successful private sale of this heretofore public function, a Friedman-inspired think tank remarked: "Katrina accomplished in a day ... what Louisiana school reformers couldn't do after years of trying."

Similarly, after 9/11, disaster capitalists on the federal level seized upon the collective American shock inflicted by the multiple terrorist attacks that day. Almost immediately, the Bush administration immediately launched its massive, for-profit "War on Terror." This War on Terror, which was fueled by Americans' post-9/11 fear, as well as omnipresent insecurity and peril, was used by the Bush administration to increase dramatically the power of the executive branch via policing, spying, occupying, detaining (without due process or meaningful suspicion), and reconstructing. The War on Terror has generated a global security industry worth $200 billion and counting. It led to the creation of the Department of Homeland Security and spawned wars in Afghanistan and Iraq, cash cows for private corporations that have benefited from no-bid contracts with the federal government to produce and provide weapons; build high-tech structures and barriers; provide and mount security cameras; reconstruct foreign facilities; help occupy Iraq; assist in the care and feeding of American personnel and members of the military; and build and defend a brand new billion-dollar U.S. Embassy in Iraq. Thanks to disaster capitalists' exploitation of Americans' insecurity after 9/11, terror has become an incredibly lucrative market unto itself. In the name of national security and fighting terrorism, disaster capitalists have created "the disaster capitalism complex," what Klein calls "a full-fledged new economy in homeland security, privatized war[,] and disaster reconstruction.

I believe we are witnessing a land grab of a magnitude not seen since America was first being settled by "civilized people." The predominantly black victims of Hurricane Katrina have been evacuated and housed in practically every state except Louisiana, and by no means is it a benign occurrence.


tasked with nothing less than building and running a privatized security state, both at home and abroad."37

Self-interest is not limited to denizens of the private sector.38 In fact, disaster capitalists can and do operate in the public sector. Civil servants may appear uniquely insulated from the temptations of disaster capitalism;39 however, they are not. Their goals may not be as grand, lucrative, or global as those of multinational corporations, world leaders, or dictators, but they are equally susceptible to the temptation to exploit postcrisis public shock to achieve self-interested private gain.40 Few civil servants are in a better position to be a successful disaster capitalist than a prosecutor who is willing to break laws and rules to charge and prosecute the innocent.41

When Discretion Meets Disaster

In prosecuting the Duke lacrosse case until his ethical lapses forced him off, Durham District Attorney Mike Nifong used his personal brand of disaster capitalism to secure his reelection and—he thought—he eventual pension. He exploited the community's shock over what it thought had occurred on Buchanan Street that night. He was so determined to get what he wanted that he stirred up public sentiment, abused his prosecutorial power, violated his ethical and legal duties, and infringed upon the constitutional rights of the lacrosse players. He also grossly misused Crystal Mangum, who ultimately suffered widespread condemnation and national ire as a result of his actions. He was not, of course, the first man to use Mangum. He was, however, the most powerful one and, as a result, had the most devastating impact.42


38. See Klein, supra note 9 (noting that disaster capitalists' idea of exploiting crises is not unique to modern right-wingers: "[f]ascists have done it. State communists have done it").


40. See KLEIN, supra note 25, at 51.

41. See Mosteller, supra note 2, at 1365 (citing Fred C. Zacharias, Structuring the Ethics of Prosecutorial Trial Practice: Can Prosecutors Do Justice?, 44 VAND. L. REV. 45, 50, 107 n.259 (1991)).

42. Others have also made this observation, including a mother of one of the accused players: "When I'm trying to get over the rage I am thinking about, so deeply, this young
Crisis

Crystal Mangum was born July 16, 1978, the youngest of three children in a working-class Durham family, headed by Mary and Travis Mangum. Her family lived across the street from one of the churches the family attended regularly. In 1996, she graduated from Durham’s Hillside High School. Her soon-to-be husband, Kenneth N. McNeill, was fourteen years her senior and did not know how to read or write. He was, however, astute enough to know that Crystal “wanted to see the world.” When he suggested that she “join the Navy,” she did.43

In the summer of 1997, the Navy stationed Crystal in Dam Neck, VA, where she trained in radio operation and navigation equipment. In the fall of that same year, Crystal married Kenneth. The Navy then transferred Crystal to Concord, CA, and assigned her to an ammunition ship. According to Kenneth, their honeymoon was the cross-country drive to Crystal’s new assignment.44

Lengthy days at sea caused tension in the marriage. Crystal developed interest in another sailor and began a relationship with him. Her seventeen-month-old marriage crumbled. The couple had no children. Crystal, however, had provided Kenneth with a most loving and enduring gift: she had successfully taught him how to read and write.45

Over the course of the next few years, Crystal’s life destabilized. She was discharged from the Navy; records indicate that she was pregnant with her lover’s son at the time. In 1998, Crystal filed a court complaint against Kenneth, accusing him of taking her into a wooded area and threatening to kill her. Kenneth denied the charges and Crystal never appeared in court for the hearing on them. As a result, the complaint was dismissed. In 2002, Crystal was arrested after getting drunk and fleeing in a car she stole from the parking lot of a strip club where she worked as a dancer—she had taken the keys from a customer’s pocket while she gave him a lap dance. Before being apprehended, she led the police on a high-speed chase. She was charged with multiple felonies and misdemeanors. In 2003, Crystal pleaded guilty to four misdemeanors and was sentenced to three consecutive weekends in jail and two years’ probation.

44. See id.
45. Id.
She paid court costs, restitution, and all of her legal bills. That same year, Crystal would find herself in court on another matter entirely: seeking child support from her ex-lover, the sailor, for their two children. By then, Crystal was the mother of three.46

For a short period of time, Crystal somehow managed to pull out of this tailspin. She enrolled in Durham Technical Community College and, in 2004, received an Associate's Degree. She then sought and gained admission to North Carolina Central University (NCCU), a historically Black college with a proud history, robust curricular offerings, an international student body, and celebrated alumni.47 48 49 NCCU "Eagles"50 are expected to soar, and the school's alumni

46. Id.
47. NCCU was chartered in 1909 and began operations in 1910 as the National Religious Training School and Chautauqua. NCCU declared that its purpose was to prepare young men and women of character and sound academic education to serve the country. After a major reorganization in the early- and mid-1920s that would inure to the school's financial benefit, the General Assembly of North Carolina began the creation of the nation's first state-supported liberal-arts college for African-American students. The institution's name was changed to North Carolina College for Negroes (NCC). NCC's mission was changed to preparation of secondary-school teachers and principals in a liberal-arts education. In the late 1920s and through the 1930s, the institution's physical plant grew, thanks to generous private donors (including Durham philanthropist B.N. Duke). In 1937, the Southern Association of Colleges and Secondary Schools accredited NCC as an "A" class institution. In 1957, the association admitted NCC to membership. In 1969, North Carolina College became North Carolina Central University (NCCU). See North Carolina Central University, NCCU at a Glance, http://www.nccu.edu/AboutNCCU/index.cfm (last visited Jan. 20, 2008).
48. See id. (listing bachelor's degrees in over one-hundred fields of study and graduate degrees in approximately forty fields).
49. See id. (noting that NCCU's student body consists of students hailing from the United States, Liberia, India, Senegal, Sierra Leone, Nepal, China, the Czech Republic, Nigeria, South Korea, Russia, the Dominican Republic, Mexico, and South Africa).
50. See id. The university is committed to the fulfillment of its motto "Truth and Service," as well as the preparation and equipment of graduates capable of competing in the global marketplace. NCCU alumni include Maynard Jackson (J.D.), the first African American mayor of Atlanta; G.K. Butterfield (B.S., J.D.), U.S. Congressman and former associate Justice of the North Carolina Supreme Court; Eva Clayton (M.S.), U.S. Congresswoman; Andre Leon Talley (B.A.), Editor-at-Large of Vogue Magazine; multi-millionaire Willie Gary, Esq., aka “The Giant Killer” (J.D.), whose settlements wrested from mega-corporations are legendary; The Honorable Wanda G. Bryant (J.D.); George Hamilton, Sr. (B.S.), President, Dow Automotive; Ernie Barnes (B.A.), Father of American Neo-Mannerist art; Larry Black, Olympic Gold and Silver Medalist; and Samuel "Mr. Clutch" Jones (B.S.), NBA Hall of Fame Inductee. Id.
51. See id. NCCU's school mascot is an eagle.
prove that all manner of fame and achievement are possible. As a "B" student, Crystal was certainly poised to take flight, even with her shaky, but seemingly stabilized, trajectory. Employment as a sex worker would be unthinkable and an inexplicable perversion. How, then, did this young woman fall so far from the hallowed halls of higher learning, not only to become a sex worker, but to work as an employee of at least eight "escort agencies," including the likes of Angels Escort Service and Diamond Girls Service, a.k.a. "Bunny Hole Entertainment?" She was, on the one hand, a single mother and successful college student; yet, on the other hand, she not only stripped for money, but also fellated and had all manner of sexual intercourse with strangers for a living and acquaintance for whatever reason suited them or her.

There seems to be no satisfactory reconciling of the noble commencement tassel with the ignoble tassel of the stripper's pasties. Crystal literally embodied the town-gown schizophrenia of Durham, which could accurately be described as "a very volatile mix of race, sex, and class." Her "defiance narrative ultimately succumbed to the unacceptable metanarrative of the drug- or other-substance-added Black stripper, stumbling and falling during an aborted routine after arriving late, talking incoherently to no one in particular, only to end up passed out a short distance away, in the parking lot of an all-night Kroger grocery store.

Erik Erikson puts it pithily: "[she] who is ashamed would like to force the world not to look at [her], not to notice [her] exposure. [S]he would like to destroy..."
March 14, 2006, was not the first time that Crystal had been looked up and down by paying, leering, insulting strangers. It was an indignity that she had suffered repeatedly and, on this occasion, one time too many. Her protectors—whoever they were—had failed her. Benefactors were nowhere to be found. Nice girls may finish last; however, last girls "don't finish nice." Accordingly, it should come as little surprise that when Crystal was asked whether she had been violated, she not only answered "yes," but over the course of the next few days, falsely—but, perhaps, not inaccurately—also indicated that she had been violated in virtually every way one might imagine.

Shock

There is a brief psychological interval or paralysis, akin to suspended animation, after shock is experienced. In this moment, those who are shocked are far more open to suggestion. They are more likely to comply with commands or directions; they are more willing to submit to another's imposed will. In the immediate aftermath of the shock, individuals and societies can become much more childlike, in that they are more willing to follow leaders who proclaim they shall protect. In such a state, there is a decreased ability to see or react clearly, allowing for, among other things, support of paternalistic leadership. The goal at this stage in a disaster capitalist's strategy is to stall or prevent those shocked from recovering their rational and intellectual footing prior to the leadership pushing through its self-interested programs and policies.

Nifong faced an election fight in a district that was forty-percent African American. Durham's Black community—fueled by the local, regional, and national disgust at what the lacrosse players were alleged to have done—was particularly ripe for the apotheosization of Nifong. Properly manipulated, they were capable of lifting him and his campaign effort to a soaring success on Election Day. He grabbed the manufactured disaster, exploited community shock, and ran with it.

60. See Mosteller, supra note 56, at 286 (recounting Mangum's differing accounts of the "assault," including anally, vaginally, orally, perhaps without a condom, with an instrument, in a bathroom, car, or suspended mid-air); Jeffrey Rosen, The Unwanted Gaze: The Destruction Of Privacy In America 18-20 (2001) (describing the injury to dignity from unwanted gazes).
61. See Klein, supra note 9.
62. See Mosteller, supra note 2, at 1354-55 (speculating Nifong's motivation was to take advantage of a racially charged allegation and, via "crass political calculation ... pursue charges without being constrained").
Nifong's narrative was simple, yet powerful. He portrayed himself as a hero, a courageous prosecutor who was prepared to provide solace to a community that needed a champion of their cause. Likewise, he desperately needed them for his reelection bid. On Mangum's behalf—and by extension, Black Durham's—Nifong challenged the players' manhood: “I'm disappointed that no one has been enough of a man to come forward”; questioned their humanity: “I would like to think that somebody who was not in the bathroom has the human decency to call up”; and threatened their resolve: “My guess is that some of this stonewall of silence ... may tend to crumble once charges start to come out.”

Nifong also, at various times, verbalized his intention to avenge the wrong that had been done not only to Mangum, but to Durham as well—particularly to its Black residents:

“[T]he reason I decided to take it over myself, was the combination gang-like rape activity accompanied by the racial slurs and general racial hostility”; “I'm not going to let Durham's view in the minds of the world to be a bunch of lacrosse players from Duke raping a Black girl in Durham”; “The circumstances of the rape indicate a deep racial motivation for some of the things that were done. It makes a crime that is by its nature one of the most offensive and invasive even more so”; “[T]he contempt that was shown for the victim, based on her race was totally abhorrent. It adds another layer of reprehensibleness, to a crime that is already reprehensible.”

Of course, as he was purporting to stand in the shoes of a hero, Nifong was purposefully violating the accused players' constitutional rights when he failed to disclose exculpatory evidence, violating North Carolina law and the players' rights by ordering a suggestive lineup, and violating his ethical obligations through these actions and by trying the case in the press. But these were facts about which the voters were unaware and toward which Nifong appeared to manifest zero concern.

63. See Taylor & Johnson, supra note 3.
64. Mosteller, supra note 2, at 1350 n.49 (citations omitted).
65. Id. at 1350–51 (citations omitted).
66. See Brady v. Maryland, 273 U.S. 83 (1963) (holding that due process requires prosecutors to provide exculpatory evidence to defense counsel). This prosecutorial obligation
Disaster Capitalism

Disaster capitalism relies upon the element of surprise. Klein puts it this way: "A state of shock, by definition, is a moment when there is a gap between fast-moving events and the information that exists to explain them." Without a story, a description of what has happened, those in a state of shock are vulnerable to those poised to exploit them. Once a story describes what has occurred, shock dissipates; with a story, the world makes sense again. Narratives are more than useful; they are determinative.

Nifong embarked on an ideological campaign to seal his electoral deal. He harnessed the shock of Mangum’s “gang rape” and used it to ensure his electoral win on votes from a community in crisis. His message of protection, as well as his self-created identity as a powerful, avenging angel, allowed Nifong to profit from the fear by insinuating that he was uniquely positioned to save Black Durham from the wealthy, White power structure. Without the Duke lacrosse rape case, it is almost certain that Nifong would not have been able to win the election; proffering himself as the most meritorious candidate would not have otherwise been possible. In other words, he benefited from his successful manipulation of what he understood to be a useful “market opportunity.”

Nifong won the primary (which, in North Carolina at the time, was tantamount to winning the general election). He finished with 45.2 percent of the vote; his nearest competitor, Freda Black, won 41.5 percent; Keith Bishop, an African-American candidate, garnered a mere 13.3 percent. Nifong’s narrow victory—reportedly 883 votes—was attributed to the strong support he received from Durham’s Black community. There, Nifong won 44 percent of the Black vote; Black 25.2 percent, and Bishop 30.8 percent.

exists even when the defense fails to asks for it. See United States v. Agurs, 427 U.S. 97 (1976). This obligation is reiterated in each state—including North Carolina—and the District of Columbia, via various ethical and disciplinary rules for prosecutors. See Davis, supra note 16, at 130; see also N.C. Gen. Stat. §15A-901 (2007) (applying discovery statutes to cases within the superior court’s original jurisdiction).

67. KLEIN, supra note 24, at 458
68. Id.
69. See TAYLOR & JOHNSON, supra note 3, at 201–23. It is reported that Nifong informed his campaign manager, “I’m getting a million dollars of free advertisements.” See Mosteller, supra note 2, at 1355–56. Regarding non-Black Durham voters, the vote was as follows: 46.2, 50.6, and 3.2 percent for Nifong, Black, and Bishop respectively. Id.
Shockproof?

Ultimately, Nifong's self-interest and personal ambition “collided with a very volatile mix of race, sex, and class”70 and he lost control of the situation. Perhaps Nifong's incomplete understanding of the narrative he offered, which the public initially accepted but ultimately rejected, doomed his political grab for power and destroyed his career. Ponder how very different an outcome there might have been if Nifong had been more skilled and retained his psychological edge over the lacrosse players by immediately jailing and separating them from all communication, sensory input, and, therefore, potentially useful narratives. An example of such a prosecution is in order.

**The Central Park Jogger Case: Mission Accomplished**

The boys never told the same story twice, nor were their stories consistent. Each one pleaded not guilty to a vicious rape and brutal assault. Those who had provided a videotaped confession claimed that the police coerced and concocted the stories. The DNA collected at the crime scene did not match the DNA of any of the boys.71 The female victim was evidence-free when it came to the “attackers’” DNA.72 She had no recollection of the crime or memory of the perpetrators. She never identified the boys as attackers.73

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70. Mosteller, supra note 2, at 1337 (quoting North Carolina Bar Chair Lane Williamson).
73. Similar to the Duke lacrosse case, in the Central Park Jogger case, despite the inability to link forensically any of the teens to the DNA found at the crime scene, the prosecution remained undeterred and its “quest for convictions never wavered.” Rivka Gewirtz Little, Ash-Blond Ambition, THE VILLAGE VOICE, Nov. 20–26, 2002, http://www.villagevoice.com/news/0247,little,40000,l.html; see also Wise, 194 Misc. 2d at 491–92. As four of the boys were under sixteen years old when they were convicted, they were sentenced under juvenile guidelines, requiring sentences of five to ten years. Because Kharey Wise was sixteen at the time he was convicted, however, he was considered an “adult” under New York law and was sentenced to five-to-fifteen years imprisonment. Trisha Meili revealed her identity to the public in her book, I AM THE CENTRAL PARK JOGGER: A STORY OF HOPE AND POSSIBILITY (2003). At the time of her writing, the convictions of the accused and convicted boys had not been vacated. In fact, the book retells the event from facts that have been discredited and rejected, given the confession of Reyes, as well as the DNA match of his semen with that found on Meili and at the crime scene. See Trisha
Yet, to the government prosecutors, she was an opportunity. They used her, capitalizing upon the shock created via the injuries inflicted on her violated and broken body. Her trope was seized, and a city's racialized fear of crime was stoked to epic levels.74

The Central Park Jogger case is one of the more modern and infamous miscarriages of justice in the United States. There, five Black and Latino teen boys, ranging in age from fourteen to sixteen years old, were wrongfully convicted of the vicious attack on Trisha E. Meili, the “Central Park Jogger,” a young White woman who was raped, viciously beaten, and left to die in a ravine in Manhattan’s Central Park.

That case represents an unfettered exploitation of a community’s shock via the government’s jettisoning the rights of the accused in order to advance key prosecutorial players’ professional and pecuniary interests. Those responsible took full advantage of the city’s tense racial and class climates of mistrust and loathing, as well as the shock of a brutal crime against an unsuspecting young White, middle-class, female Phi Beta Kappa investment banker at Salomon Brothers who jogged through Central Park at night. New York City was on edge, given a number of high-profile racial crimes.75 All of the boys—Antron McCray, Kevin Richardson, Raymond Santana, Yusef Salaam, and Kharey Wise—were regarded as “dubious” students from fractured Harlem homes, itself then widely regarded as a marginalized, impoverished community of non-White New Yorkers.76 That the assault occurred while she jogged through what was thought to be a space safe from the crime that otherwise plagued

74. See Hancock, supra note 71 (quoting Northwestern University’s Children and Family Justice Center Attorney Steven Drizin).

75. See Sydney H. Schanberg, A Journey Through the Tangled Case of the Central Park Jogger: When Justice is a Game, VILLAGE VOICE, Nov. 19, 2002, http://www.villagevoice.com/news/0247.schanberg.399991.html (recounting violent, criminal cases which received extensive media coverage and were overtly racial, including the 1986 Howard Beach killing of a young black man chased by a group of bat-wielding white men; the 1989 Bensonhurst, Brooklyn, killing by white men of black teen Yusef Hawkins, after Hawkins had wandered onto their Italian-American “turf”).

76. See Chris Smith, Central Park Revisited, N.Y. MAG., Oct. 14, 2002, http://nymag.com/nymetro/news/crimelaw/features/m_7836/. As it turns out, this was untrue. Prior to this tragedy, each boy had a very good reputation. Most were from stable, two-parent, working-class homes. Words intimates used to describe the boys were “not aggressive,” “very easy-going,” “a straight-up guy,” and “very shy, very respectable.” See Hancock, supra note 71.
New York City at the time was a "bonus" for the Manhattan District Attorney’s Office; in fact, the site of the crime, considered by some "the city’s premier greensward," exponentially bolstered "the theme of middle-class violation." It was nothing, then, for motivated media outlets to complete the story with the specter of Black and brown male thugs marauding around the city, engaged in a "violent outburst of destruction, or beating, or assaulting"—also known as "wilding"—in an orgy of gang rampage and rape. This was the government’s "theory" of the case.

Given the trauma suffered and shared by New York City’s ruling White class from the event, agents with an agenda began their violations of the civil and human rights of the accused teens. In a blatant power-grab, Linda Fairstein, head of the Manhattan District Attorney’s Sex Crimes Unit, bested her supervisor in securing the case assignment by directly soliciting District Attorney Robert Morgenthau. Fairstein not only authorized police interrogations of the boys, she also bullied and prevented one child’s mother and another’s friends—which included the child’s mentor, an Assistant U.S. Attorney—from entering the interrogation room.

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77. Hancock, supra note 71 ("At the same time, middle-class white people were slowly moving back to midtown and reclaiming the symbol of the city, Central Park.").
78. See Smith, supra note 78 (characterizing Central Park as a "mythologized" locale).
79. See Hancock, supra note 71 (pondering the origins of the term "wilding," given that the case "planted ‘wilding’ into the English lexicon, a term that came to define the inhumanity of these kids").
80. See id. According to the Columbia Journalism Review, the press defined "wilding" as "a phenomenon not unlike the violent raves in A Clockwork Orange—'packs of bloodthirsty teens from the tenements, bursting with boredom and rage, roam the streets getting kicks from an evening of ultra-violence.'" Id.
81. See Smith, supra note 78. The police reported that the accused boys coined the term "wilding" to describe their acts on the evening of their arrest. "Wilding" purportedly involved "beating up random victims." Id. In fact, the government conceded in open court that its theory of the case was that the jogger "was set upon by a number of young men, gang-raped by two or more of them, kicked and pummeled by the group, and beaten about the head with a pipe, a brick, and a rock." People v. Wise, 194 Misc. 2d 481, 494–95 (N.Y., Dec. 19, 2002).
82. One scholar characterized such young men as "teen superpredators" and predicted that their ilk would, by the millennium, overrun the streets. See Hancock, supra note 71.
83. See Schanberg, supra note 77.
84. Judge Titone, dissenting from his colleagues’ affirmance of Saleem’s conviction, spoke harshly of the police officers and Assistant District Attorney:
   This case concerns a horrible and brutal crime that captured and held the public’s attention for more than a year. It also involves the conduct of police officers
book, Fairstein's outrageous, unconstitutional, and unethical conduct was done to keep the vulnerable boys secluded and without the assistance of protective adults or legal counsel. She intended that she and the police who worked under her authority and command would capitalize on the boys' youth and isolation, as "she had been informed by the interrogating detective that

and an Assistant District Attorney who obtained a confession from a fifteen-year-old boy by keeping him in isolation from the three concerned adults who came to the police station to help him... representing a deliberate effort to keep him away from all responsible individuals who might have offered counsel or assistance.

In all, defendant was questioned for an hour and a half before the interrogation was terminated. During that entire period, unbeknownst to him, there were related and/or concerned adults who were present and could have provided him with helpful counsel.... What emerges from these facts is a picture of law enforcement officers who were so anxious to extract a full and complete confession that they did everything within their power to keep this youthful suspect isolated and away from any adults who might interfere with their exploitation of the awesome law enforcement machinery possessed by the State.

People v. Salaam, 83 N.Y.2d 51, 58, 60 (N.Y. 1993) (Titone, J., dissenting) (internal citations omitted).

85. The Shock Doctrine dovetails quite nicely with the U.S. Supreme Court's Fourth Amendment jurisprudence, which relies upon and encourages citizens' consent to relinquish their constitutionally protected rights against unreasonable governmental searches and seizures. In fact, citizen ignorance is essential to disaster capitalism, particularly given that it allows governmental actors to exploit their imprimatur, as well as the rights-holders' lack of comprehensive and accurate knowledge concerning their constitutional rights and personal options. Such disadvantages are to be exploited by law enforcement; such is the accepted way. See, e.g., John M. Burkoff, Search Me!, 39 Tex. Tech L. Rev. 1109, 1120 (2007) (citing Daniel Williams, Misplaced Angst: Another Look at Consent-Search Jurisprudence, 82 Ind. L.J. 69, 80 (2007)). The target suspect's "disadvantages of ignorance, fear, and resignation are accepted as vulnerabilities we expect law enforcement to exploit to good effect." Id. Accordingly, waiver of constitutional rights simplifies law enforcement's need to comport with requirements such as probable cause, reasonableness, and restraint. Consent frees the government from constraints and spares it much administrative work and shoe leather. "Consent searches are the black hole into which Fourth Amendment rights are swallowed up and disappear." Craig M. Bradley, The Court's Curious Consent Search Doctrine, Trial, Oct. 2002, at 72, http://www.aiba.org/publications/trial/0210/sct.aspx. With assent, the government simply talks its way into the desired evidence. See, e.g., Burkoff, supra, at 1121. Although the Supreme Court's Fifth Amendment jurisprudence provides criminal suspects with prophylactic measures to protect their right against governmentally compelled self-incrimination, officers are often still capable of obtaining a waiver of that protection, leading to an incriminating confession.
the questioning was in a delicate phase where [one] had begun to make some admissions.\(^86\)

How did the government wrongfully convict these boys? There are several reasons. The teens were alone. None had the experience or maturity to protect his rights—constitutional, human, civil, or otherwise—in the inherently coercive, adult environment of a police station's interrogation room. Each boy was questioned, and most had been awake, for two days before the government finally obtained their "confessions."\(^87\) Each boy gave at least one self-incriminating statement, each of which was crucial to his conviction.\(^88\)

Ultimately, in 2002, a confession by the actual perpetrator, serial rapist and murderer Matias Reyes, led to a motion for a new trial based on newly discovered evidence by stellar defense counsel and reinvestigation of the crime by the Manhattan District Attorney's Office.\(^89\) As it turned out, Reyes' DNA

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86. People v. Salaam, 83 N.Y.2d 51, 58, 63 (N.Y. 1993) (Titone, J., dissenting) ("Manifestly, an experienced adult could have disabused defendant of the naive notion that there was anything he could say to police that would result in his release at this stage in the investigation. Certainly, a knowledgeable adult—or an attorney retained by such an adult—could have alerted him that he could not extricate himself from the most serious charges merely by denying having directly participated in the rape."); see Schanberg, supra note 77. Fairstein ultimately failed to keep Salaam's determined mother away; not surprisingly, Salaam was the sole suspect who did not sign a written statement or give a videotaped confession. Id.

87. See Hancock, supra note 71 (noting that police abuse, yelling, swearing, and deceiving were a large part of the protracted interrogations).

88. See People v. Wise, 194 Misc. 2d 481, 496 (N.Y., Dec. 19, 2002) ("These confessions were the quintessential evidence in the prosecution of the defendants. They laid the foundation for a course of action developed, followed, and relied on for the prosecution and conviction of the defendants. That course was based on a theory that the defendants were involved as a group in a single incident: a crime rampage, which included rape, robbery and other crimes. That theory also incorporated a logical 'guilt by association' to the crimes against the Central Park jogger inference.").

89. Bill Perkins, president of the Schomburg Plaza tenants' association, was responsible for being a "first responder" on hearing of Reyes' confession to committing the rape and beating. Three of the boys had lived in Schomburg Plaza during his tenure. After consulting with the families, Perkins contacted attorney Michael Warren. Warren found co-counsel, Roger Wareham. The attorneys then enlisted the assistance of a private investigator, Earl Rawlins, who interviewed Reyes. Rawlins was successful; his efforts led to a detailed, written, audiotaped statement. The work of counsel and their private investigator grounded the motion to dismiss the boys' convictions. See id. Additionally, Warren and Wareham attacked the convictions based on the police investigations as well as interrogations. Most importantly, Warren and Wareham's work led to matching Reyes' DNA to the only DNA found at the crime scene and on the jogger. Id.
matched the only DNA gathered from the victim and crime scene. Acting Supreme Court Justice Charles J. Tejada vacated the convictions of the five falsely accused, prosecuted, convicted, and jailed individuals. Unfortunately, by that time, the boys had aged into men behind bars.

Angela Cuffee, sister of one of the convicted boys, said it best: “people profited from our pain.” Ms. Cuffee was correct. In fact, several professional reputations were launched from the wrongful prosecutions and convictions of the young Black defendants. The pain suffered by the wrongfully convicted and their loved ones was particularly lucrative for Fairstein, who, despite lackluster reviews of her literary talent, left the Manhattan District Attorney’s Office “to write novels about an assistant district attorney who prosecutes sex crimes”—thereby increasing her net worth by millions.

The Duke Lacrosse Case: Disaster Capitalism, Demurred?

Initially, Nifong’s attempt at disaster capitalism succeeded. Ultimately, however, it failed. Nifong was thwarted by, among other things, wealth—defendants with motivated and moneyed parents who were immediately able to retain quality defense counsel on behalf of their sons. Had Nifong successfully segregated the accused, he might have enjoyed the “success” obtained by the prosecutors in the Central Park jogger case, in which the convictions rested nearly

Reyes, a violent, serial rapist, had committed a rape two days before raping the Central Park jogger. Id. His modus operandi involved stalking lone, White, female joggers; brutalizing them; raping them; and stealing their portable stereo and headphones. Id.

90. See Wise, 194 Misc. 2d at 488–89 (finding that Reyes was the sole source of DNA identified at the crime scene “to a factor of one in 6,000,000,000 people”). Additionally, Reyes’ statement and criminal history established that he habitually stalked and then attacked White female victims in their twenties; beat, raped, always robbed them, frequently stole their Walkmans, and tied them up. Id. at 491.

91. See id. at 482–83, 486.


93. Oliver Jovanovic, formerly a Columbia University microbiology Ph. D. student, was wrongly convicted by Fairstein as a cybersex attacker. A court of appeals overturned his conviction, determining that crucial exculpatory evidence was withheld by the prosecution. The case was ultimately dismissed, but only after Jovanovic served two years in jail for a crime he did not commit. See Gewirtz, supra note 73. In commenting upon Fairstein’s involvement in the Central Park jogger case, Jovanovic stated: “Each time one of these cases occurred, her books probably went flying off the shelves.... She used what happened in that unit to make money, and that is wrong.” Id.
exclusively on the boys' "confessions"—which were, of course, extracted while they were not only sequestered from family and friends, but also abused by police.94

Additionally, accusing white men of rape across racial and class lines can be tricky. It seems that when white men are accused, scrutiny turns toward the woman and her "contribution" to any aspect of the sexual violence to ascertain how she caused and, therefore, deserved the assault. Further, when the purported victim is a Black woman, the stereotype of black female promiscuity decreases the perceived criminal culpability of the accused. Thus, Nifong's accusation of rich, white males on behalf of a working-class, Black, female stripper may have imploded on its own. Unlike the narrative enjoyed by the prosecutors in the Central Park jogger case, here the story already in place was a centuries' old narrative that did not recognize well-to-do White males' nonconsensual sexual conduct with a lower-class Black female as criminal.

Specifically, this American monomyth is of one sort and identity; it assumes an unyielding complexion and plays a particular role in the United States. Essentially, the monomyth is based on female peril and "the rescue of just one young girl."95 Unfortunately for Nifong, American mythology, lore, and preoccupation with female rescue and retribution for womanhood defiled are based on "[t]he specter of the White maiden taken against her will by dark savages." Sexual predation by dark-skinned (Native Americans) and Black men of White women was the horror against which heroic White men came to the rescue of pure White women and avenged these victims defilement or endangered honor.96 But American mythology has never had an affinity for Black female purity or protection.

Prosecutorial remonstrations regarding an impaired Black stripper with a checkered past and a criminal record who was paid to dance for wealthy White athletes were especially likely to meet with failure. Throughout much of American history, while mere allegation of the rape of a White woman by one or more Black men was punished "with especial violence,"97 raping a Black woman

94. 60 Minutes, supra note 42. According to a mother of one of the accused players, Nifong's error was that he "messed with the wrong families" (quoting Rae Evans, mother of player David Evans). Mrs. Evans went even further, vowing that Nifong "will pay every day for the rest of [his] life." Id.

95. See FALUDI, supra note 1, at 200.

96. See id.

97. See id. at 212–14, 276–78 (chronicling white American rape hysteria regarding native and African men whose purported victims were White women). Even today, the names and faces of young White women proliferate the front pages of newspapers, tabloids, and television screens, which has been identified as the "White woman syndrome" or the "damsel in distress" factor, as the focus remains unerringly upon one class of missing person: "at-
was neither prohibited nor a crime. More difficult for Nifong, Mangum was no vulnerable maiden, no virginal, trembling waif, capable only of being taken, ravaged, and rescued; she was not a virtuous Black damsel in distress needing a savior. One cannot save what never was and, certainly, what no longer exists.98

This failure of narrative dovetails with Nifong’s failure to capitalize on the initial shock of the accused lacrosse players and, in accordance with the tenets of disaster capitalism, isolate and force his narrative upon them. Shock does not last; it wears off, eventually. It is a temporary state. Those who are skilled in interrogation know this very well. The window of opportunity is small; the right effort at the right time is key to successful implementation of the Shock Doctrine. Given the nearly universal reaction of complete helplessness when faced with the government’s awesome power, Nifong might have retained the ability to “break” the players, given the confusion, disorientation, and surprise of being jailed and isolated without explanation.99 Instead, by allowing the players to remain in constant contact and communication not only with each other, but with their parents and counsel as well, they were able to resist and then combat Nifong’s “shock.” Unlike the Central Park jogger boys, these players were almost always cognizant of what was happening and why. Most importantly, their parents and counsel were available to offer counternarratives to Nifong’s attempts to push his contrived indictments through the North Carolina criminal-justice system. The presence of these counternarratives brought a perspective on the crisis that explained the shocking event and reoriented the players’ emotions and reason. The world as they once knew it now made sense again.100

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98. See Pokorak, supra note 97, at 7–9.
99. See Klein, supra note 24, at 459, 465–66 (noting how CIA training materials stress the necessity for psychological and physical segregation of detainees to cut them off from anything that will assist in the creation of a counternarrative).
100. See id. at 458; see also Klein, supra note 9 (identifying resistance as key to combat disaster capitalism’s shock doctrine).
Conclusion

It is a relief that this “rogue prosecutor” was stopped in his tracks.\textsuperscript{101} Unfortunately, he was not stopped before wreaking substantial, additional damage not only to the accused—who have received significant sympathetic treatment—but also to Mangum, who suffered unfathomable humiliation. Damage was also done to the real victims of sexual assaults who, in the future, may be cowed into silence by the treatment of Mangum and the theatrical, public outcome: not only were all charges against the accused dropped, but their innocence was declared as well.\textsuperscript{102}

The Duke case can be seen as a tale of limitation, perhaps, on the reach of disaster capitalism. Nifong’s reaction to Mangum’s allegations was that of a classic disaster capitalist, and he initially achieved his goal of reelection as a result. Ultimately, however, Nifong’s malfeasance was detected and punished, given the moneyed families who were able to check and, ultimately, trump his hand. Nifong, though, was just unusually unlucky: the Duke defendants were atypical of those who usually enter the criminal-justice system. They had massive resources; most criminal defendants have few or none. They assembled a legal dream team, purchasing not merely an adequate, but a superior, defense. These attorneys spent literally thousands of hours and millions of dollars defending the accused. To the contrary, the overwhelming majority of the criminally accused are represented too often by overworked, underpaid assigned counsel.

“The system’s legitimacy turns on equality before the law, but the system’s reality could not be further from that ideal.”\textsuperscript{103} Until change occurs, “typical” criminal defendants will remain vulnerable to prosecutorial discretion that

\textsuperscript{101.} See Mosteller, supra note 2, at 1338 (noting North Carolina Attorney General Roy Cooper’s characterizations of Nifong).

\textsuperscript{102.} See Kathleen Parker, Nifong’s Legacy, Feminism’s Shame, REALCLEARPOLITICS.COM, June 20, 2007, http://www.realclearpolitics.com/articles/2007/06/unfinished_business.html. Parker notes that after the mishandling of this case, “real rape victims may be reluctant to come forward” and intimidated prosecutors may be reluctant to bring such prosecutions when faced with the possibility of persuading “juries jaded by the Duke spectacle.” Id. (characterizing Nifong’s legacy as not only one that be long-lived, but also “ultimately may hurt women more than it does the falsely accused men”); see also Aaron Beard, Durham: Don’t Blame Us for Lacrosse Case, SALON, Jan. 16, 2008, http://www.salon.com/wires/ap/us/2008/01/16/D8U78R7O1_duke_lacrosse/index.html. Nifong was disbarred and spent one night in jail for North Carolina State Bar violations. Additionally, in January 2008, Nifong filed for bankruptcy.

\textsuperscript{103.} DAVID COLE, NO EQUAL JUSTICE: RACE AND CLASS IN THE AMERICAN CRIMINAL JUSTICE SYSTEM 3 (1999).