



E-ISSN: 2664-603X  
P-ISSN: 2664-6021  
IJPSG 2022; 4(2): 118-121  
[www.journalofpoliticalscience.com](http://www.journalofpoliticalscience.com)  
Received: 18-08-2022  
Accepted: 13-10-2022

**Nikolaos Tzenios Ph.D.**  
<sup>1</sup> FRSPH, FRSM, FAAMFM,  
FWAMS, FMRS, AcIASS,  
mRSB, DABAAHP  
Professor, Public Health and  
Medical Research, Charisma  
University, Grace Bay, Turks  
and Caicos Islands  
<sup>2</sup> Train to Teach in Medicine,  
Department of Postgraduate  
Medical Education, Harvard  
Medical School, Boston,  
Massachusetts, USA

**Corresponding Author:**  
**Nikolaos Tzenios Ph.D.**  
<sup>1</sup> FRSPH, FRSM, FAAMFM,  
FWAMS, FMRS, AcIASS,  
mRSB, DABAAHP  
Professor, Public Health and  
Medical Research, Charisma  
University, Grace Bay, Turks  
and Caicos Islands  
<sup>2</sup> Train to Teach in Medicine,  
Department of Postgraduate  
Medical Education, Harvard  
Medical School, Boston,  
Massachusetts, USA

## The duke lacrosse scandal and ethics in prosecution

**Nikolaos Tzenios**

**DOI:** <https://doi.org/10.33545/26646021.2022.v4.i2b.181>

### Abstract

Ethics is one of the most critical issues for those who hold public offices, whether elected, appointive, or in the civil service. The issue is fundamental in the criminal justice sector since people's lives, livelihoods, and liberty are at stake whenever individuals negatively interact with the criminal justice system. Wrong accusations, being followed by unfair convictions, can usually lead to a person losing decades of their life, for which there can never be compensation enough to cure the emotional pain and injustice. Some criminal justice professionals who have engaged in ethical misconduct include state and local police, federal agencies, such as the Federal Bureau of Investigations (FBI), state and federal prosecutors, and judges who may be local, state, or federal. In the present case, the person who engaged in unethical conduct was Mike Nifong, district prosecutor in Durham, North Carolina. His actions had a significant impact on the community and continue to affect the perception of prosecutors in the US. The analysis illustrates that his unethical actions in prosecuting the matter had an intense effect on him, his profession, and other stakeholders. At the same time, the sanctions he received were inadequate because of the potential consequences of his actions.

**Keywords:** Federal Bureau of Investigations (FBI), prosecution, Penalties, lacrosse scandal

### Introduction

There is an expectation that people in the justice system act in a manner that protects the rights of others and ensures the basic upholding of one's ethical duties. Among the professionals on whom heavy ethical burden falls are prosecutors. Not only do they have to observe ethics for their own sake, but a failure for them to uphold ethics can have a significant impact on the liberty and property of others. One of the cases where this is most apparent is the Duke Lacrosse Case. The prosecutor who engaged unethically was Mike Nifong. The district attorney had wide-ranging implications for him, the department he led, and the profession and broader society (Steinberg & Weissler, 2018) <sup>[10]</sup>. As he played the prosecutor's role in the matter while also the district attorney, his disreputable actions stranded both his roles. Hence, the research essay uses both these terms when referring to him. His actions brought disgrace to the office and resulted in his personal and professional struggle.

In the case of Mike Nifong, the prosecutor committed ethical indiscretions in the prosecution of an alleged rape case, leading to the charging of innocent people. Mike Nifong was an elected prosecutor in the county of Durham (Steinberg & Weissler, 2018) <sup>[10]</sup>. The county was Democrat-leaning, and winning the Democrat primaries would usually ensure that one would have a victory in the general election (McCannon & Wilson, 2019) <sup>[6]</sup>. Considering all these, the prosecutor would proceed and perform actions whose motivation and effect would be unethical. He should have considered a district attorney and lawyer by interfering in the investigatory process and failing to consider questions. He accused students of being the rapists even though evidence indicated otherwise. The case of the district prosecutor is an illustration of watch ethical breaches can do to both a person's career and the lives of innocent people.

### Details of the Unethical Actions

#### Initial Actions and Interference in Police Work

False rape accusations precipitated the actions of Mike Nifong. In 2006, Duke University lacrosse team members were accused of rape by two women they had hired to perform as strippers during a party (McCannon & Wilson, 2019) <sup>[6]</sup>. The investigation started the next day after the party, after which the police arrested the players.

One of the players had written an email in which he had suggested that he wanted to have the strippers over, murder them, and peel their skin while wearing his spandex and ejaculating (“Off Message,” 2010) <sup>[9]</sup>. The comprehensive set of situations, including the fact that people accused of committing the rape were White while the two women who stated suffered rape were women of color, increased tension in the issue (“Off message,” 2010) <sup>[9]</sup>. The unethical conduct by the prosecutor started at this point because before the investigations were complete, he was already willing to take over the matter rather than let the police do their independent investigations (McCannon & Wilson, 2019) <sup>[6]</sup>. The prosecutor assigned himself the role of both the investigating officer and prosecutor, thus mudding the roles and leading to unethical and unjust results.

### **Charging the students despite the existence of exculpatory evidence**

The unethical action is further apparent in the zest to charge people who had faced the rape accusations, and the prosecutor ignored relevant exculpatory evidence. There were inconsistencies in women’s stories (Steinberg & Weissler, 2018) <sup>[10]</sup>. The police had already noted the credibility questions, but the prosecutor would not let the police make their independent conclusions about the matter. Further, the Durham Police noted that one of the ladies changed her story several times and did not appear credible, but the prosecutor brushed this aside (Steinberg & Weissler, 2018) <sup>[10]</sup>. At first, she noted that 20 White men had raped her, but with time, she proceeded to state that the people who penetrated her were only three (Hughes *et al.*, 2017) <sup>[4]</sup>. Moreover, she had stated that she had suffered groping without mentioning any penetration but later updated it to rape (McGrath *et al.*, 2018) <sup>[7]</sup>. As time went by, she proceeded to say that she had been penetrated from behind but did not know what was used to do that, and thus, it could have been anything (Hughes *et al.*, 2017) <sup>[4]</sup>. The information is part of what the prosecutor should have availed to the defense, but he hid it.

Moreover, there were plausible accusations that the prosecutor had political motivations to ensure that the matter would proceed despite the lack of evidence against the accused. Conceptually and legally, using political motivations as the basis for prosecuting a matter, especially one as serious as rape, is unethical as it considers irrelevancies, according to Kania (2017) <sup>[5]</sup>. In a country where exonerations based on prosecutor and police misconduct are common, such unethical behavior by the prosecutor was egregious. When women made the accusations, Mike Nifong was involved in a brutal primary election campaign, as his constituency elected its nominee to run for the district attorney. There was a likelihood that flosses the primary election, he would not keep his job.

Consequently, rather than merely considering the evidence, he took political considerations into account to ensure that he would attract African American support during the primaries. He may have perceived the publicity as “a million dollars in free advertising,” as McCannon & Wilson (2019, note (p. 167)) <sup>[6]</sup>. He would then proceed and win the election for district prosecutor. Still, it had been clear that his actions were unethical, as he had taken political considerations rather than the available evidence, which would have been inadequate to charge the parties with rape. Consequently, his lack of ethical compass extended to his

actions and motivation behind their actions.

### **Failing to disclose exculpatory evidence and the Brady doctrine**

While other unethical contacts could have resulted from professional overzealousness, there are no excuses that the prosecutor failed to disclose exculpatory evidence that would have freed the accused persons. The DNA sample suggested that the parties accused of rape did not rape women during investigations, as the DNA excluded them (Kania, 2017) <sup>[5]</sup>. The prosecutor would withhold the DNA evidence and later explain that he did not realize until much later that the DNA evidence he had withheld was significant to the case. He gave out the DNA evidence much later after the accused persons had suffered the ignominy of being labeled rapists, arrested, and charged for offenses they had not committed (Kania, 2017) <sup>[5]</sup>. In this way, the failure to provide the DNA evidence as part of the discovery was significant in the prosecutor’s ethical failures.

While discussing the failure to provide the exculpatory DNA evidence, it is important to restate that the prosecution, in this case, failed to follow the Brady Doctrine. The Brady Doctrine requires the prosecution to provide open-file discovery to the defense in criminal cases (Mosteller, 2008) <sup>[8]</sup>. A failure to provide open file discovery violates a defendant’s rights and shows ethical violations by the prosecution. Moreover, in the present case, while the prosecution claimed that they had failed to provide the information because they did not consider it exculpatory evidence, later signs would show that the prosecutor knew that such evidence was necessary for the defendants to exercise their rate of confronting the prosecution case (Mosteller, 2008) <sup>[8]</sup>. Consequently, a failure to provide the information to the defense was an ethical violation that the prosecutor consistently violated.

### **Improper prejudicial trial publicity**

There were also ethical violations regarding improper prejudicial pre-trial publicity. The prosecutor learned of the investigation. By the end of the next day, he had already taken over the matter and started making statements in the media that profoundly affected the perception of the matter among the public (Cassidy, 2008) <sup>[1]</sup>. The North Carolina State Bar would proceed and charge him to make prejudicial pre-trial statements to the media that it found unethically founded (Cassidy, 2008) <sup>[1]</sup>. Among others, the North Carolina State Bar complaint noted that his statements had a notable inclusion of having a material prejudice on an adjudicative proceeding in contravention of Rule 3.6 [a] (Cassidy, 2008) <sup>[1]</sup>. Among others, the statements made improper and possibly illegal commentary that all the members of the lacrosse team refused to give information to the law enforcement authorities, hence implying that when they invoked their constitutional rights to refuse to give such statements, they may have been guilty of the rape (Cassidy, 2008) <sup>[1]</sup>. In this way, these statements had an ethical implication and could have had a significant impact on the ability of the parties to ensure effective defense.

The prosecutor made other statements that were highly improper and prejudicial. For example, he suggested that the crime may have had racial motivations (Hughes *et al.*, 2017) <sup>[5]</sup>. Consequently, such statements would proceed and have a significant impact on the ability of the police to investigate the crime and the capability of the accused persons to have a

fair trial. All these unethical statements would prejudice the rights of both accused persons and people that the prosecutor was certain war witnesses to the crime.

### Impact of the unethical conduct

The unethical conduct of the prosecutor affected himself, his profession, stakeholders, and broader society. His reputation suffered (Harker, 2017). Due to his loss of reputation as both a prosecutor and ethical person, his position as a district attorney became untenable. Consequently, he resigned because he could no longer work as the head of the criminal justice system in the county, as the public could no longer trust his judgment and motivation (Harker, 2017). His reputation but professional and personal faced significant challenges.

The impact on the profession was also significant. Many Americans already have negative opinions of the criminal justice system, and there is a persistent view of prosecutors involving themselves in misconduct (Harker, 2018). For these Americans who doubt the motivations of police, investigators, and prosecution, the wrongdoing by the district attorney was another illustration of how the system is not geared towards justice but is inherently unjust. Consequently, the profession would suffer a crisis of confidence from the members of the public. They wondered whether such blatant legal and ethical violations are welcomed within the states and the US criminal justice systems. As a result, the profession suffered reputationally due to the district attorney's actions.

Other stakeholders also suffered from the actions of the district attorney. It is reasonable to infer that courts would suffer from a public crisis of confidence, as in such cases, they may appear to be an essential cog in the injustice. Moreover, other stakeholders, including the State Bar association, also suffered from the loss of reputation that one of their members had engaged in blatant unethical behavior to advance his political career instead of seeking justice. However, those who suffered the most from the tragedy were the young men who faced the accusations of one of the most egregious crimes possible. Their reputations were destroyed, while their families endured unwanted and unwelcome attention from the press (McGrath *et al.*, 2018) [7]. All these stakeholders endured negative publicity that came from the district attorney's actions.

The impact on society was also significant. Because of the passion that the prosecutor proceeded to brief the public while implying that there may have been racial motivations behind the attack, the community suffered a division along racial lines. The result was credible threats to the members of the university (Hughes *et al.*, 2018). The entire manner of how the events happened led to the worsening of racial tensions within the city. However, it also led to calls for criminal justice reform, especially regarding open disclosure by the prosecution (Greene, 2020). In this way, the society suffered from the negative repercussions of the district attorney engaging in behavior that was not ethical and was in many ways illegal.

### Penalties

The district attorney suffered several penalties as a result of the ethical violations. First, he was subjected to the North Carolina State Bar (Kania, 2017) [5]. The disciplinary committee found him guilty of fraud, dishonesty and lying to the court. As a result, the North Carolina State Bar

revoked his licenser (Kania, 2017) [5]. After the State Bar announced that he had lost his license and could no longer be an attorney within North Carolina, he would resign as the Durham County district attorney (Kania, 2017) [5]. His resignation became real a month later. However, other circumstances did not allow him the dignity of resigning on his own accord.

The court also imposed the penalty. The County Superior Court judge ordered his immediate removal from office (WRAL, 2007) [11]. Consequently, after losing his capability to practice law in North Carolina, the court suspended him from working at the district attorney's office. District attorney district attorney.

Lastly, he also personally ended up with judicial criminal sanctions against him. Because it was found that he had lied to the court, the court ordered him to spend a day in jail for criminal contempt (WRAL, 2007) [11]. Having already resigned and suffered disbarment, Superior Court Judge Osmund Smith sentenced him to a single day in confinement (WRAL, 2007) [11]. Consequently, he would also suffer criminal sanctions because of his ethical misbehavior.

### The appropriateness of the penalties

The penalties that the court, the North Carolina State Bar, gave Nifong were inadequate. The penalty should have been commensurate with the accused persons' suffering. In this way, merely disbaring he and having him serve a single day in prison was not enough. It is important to note that the accused persons have spent decades in prison due to the accusation that the District attorney amplified and the resulting ethical contact that he proceeded to reinforce. Apart from that, it is also clear that he acted in bad faith by first lying in the court that he had given all the material evidence to the defense, while it was not the case as per Steinberg and Weissler (2018) [10]. By withholding such evidence, it was clear that he was attempting to ensure that he would win at all costs. The prosecutors have a duty beyond winning at all costs. They have a duty to the truth because the liberty, property, and lives may depend on the truthfulness of a prosecutor's statements to the court and the public (Zeidman, 2019) [12]. Therefore, merely penalizing he with a day in prison was hugely inadequate considering the damage he did to both victims and their families, justice, the legal profession, and society.

The criminal penalty was also inadequate when viewed from the perspective of the explicit actions he took resulting from bad judgment and appeared to be driven by malice. Placing his political career at the forefront when the lives and liberty of the lacrosse players were at stake was not a question of just poor judgment but also malevolence. It is not justifiable that simply because he was in a situation where he could have lost his job had he lost the Democratic primaries; he had to perform a set of actions that exposed other people to lifetime struggle.

A prosecutor should act in good faith, and he failed to do that in this case. Moreover, it is notable that he only admitted to his wrongs after it became clear that he would suffer sanctions. For example, he was willing to lie to the court that he had submitted all relevant data to the defense, while this was not the case. All these actions combined with the motives and lousy faith acting mean that it is unlikely that the sentence and penalties would discourage other district attorneys from malfeasance. Consequently, he

should have suffered further sanctions as a lesson to himself and other prosecutors.

### Conclusion

Overall, the analysis exemplifies that Mike Nifong's evil activities in the prosecution of the case under investigation had an extreme impact on him, his profession, and other stakeholders. At the same time, the penalties he received from the State Bar and court were inadequate because of the potential consequences of his actions. The prosecutor took extraneous considerations other than evidence while seeking the verdict for the people who had allegedly committed the rape. Rather than following the evidence, he took into account political considerations. The result was interference in the police work, provision of prejudicial information to the media and public, failure to offer an adequate resolution, and other ethical violations. While he suffered the ignominy of disbarment and a day in jail, the sanctions were inadequate. Mike Nifong was a clear example of a dishonest person. To pursue his own goals, he accused innocent people of one of the ugliest crimes. It ruined the lives of the students and affected their families and society. To avoid such cases in the future, the judicial system should be reformed, and more severe penalties should be introduced for similar crimes to discourage other people from repeating them.

### References

1. Cassidy RM. The prosecutor and the press: Lessons (not) learned from the Mike Nifong debacle. *Law and Contemporary Problems*. 2008;71(4):67-92. <http://www.jstor.org/stable/27654684>
2. Greene BA. Should criminal justice reformers care about prosecutorial ethics rules? *Duquesne Law Review*. 2008;58(2):249-278. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/duqu58&div=16&id=&page=>
3. Harker TC. Faithful execution: The persistent myth of widespread prosecutorial misconduct. *Tennessee Law Review*. 2017;85(4):848-895. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3206643](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3206643)
4. Hughes RL, Giles MS, Haywood J, Snipes JT. Media perceptions and constructions of race and sports: Reflections on the Duke Lacrosse scandal. *Journal for the Study of Sports and Athletes in Education*. 2017;11(3):161-174. <https://doi.org/10.1080/19357397.2017.1343176>
5. Kania RR. Ethical challenges for prosecutors. In, *Justice, Crime, and ethics*, Routledge; c2017. p. 159-181.
6. McCannon BC, Wilson M. "A million dollars in free advertising" politics and sex offense prosecution in the wake of Duke Lacrosse. *Supreme Court Economic Review*. 2019;27(1):167-187. <https://ideas.repec.org/a/ucp/scerev/doi10.1086-704366.html>
7. McGrath M, Savino JO, Turvey BE. False allegations of sexual assault. In *False allegations*, Academic Press; c2018. p. 191-223.
8. Mosteller RP. Exculpatory evidence, ethics, and the road to the disbarment of Mike Nifong: the critical importance of full open-file discovery. *George Mason Law Review*. 2008;15(2):257-318. [https://scholarship.law.duke.edu/faculty\\_scholarship/1834/](https://scholarship.law.duke.edu/faculty_scholarship/1834/)
9. Off Message. *Newsweek*; c2010, July 1. <https://www.newsweek.com/message-108021>
10. Steinberg MI, Weissler LJ. The litigation privilege as a shelter for miscreant legal counsel. *Oregon Law Review*. 2018;97(1):1-50. [https://scholar.smu.edu/cgi/viewcontent.cgi?article=1285&context=law\\_faculty](https://scholar.smu.edu/cgi/viewcontent.cgi?article=1285&context=law_faculty)
11. Wral. Nifong guilty of criminal contempt; Sentenced to 1 day in Jail; c2007, September 1. <https://www.wral.com/news/local/story/1763323/>
12. Zeidman S. From dropsy to testifying: Prosecutorial apathy, ennuui, or complicity. *Ohio State Journal of Criminal Law*. 2019;16(2):423-439. [https://kb.osu.edu/bitstream/handle/1811/88056/OSJCL\\_V16N2\\_423.pdf?sequence=1](https://kb.osu.edu/bitstream/handle/1811/88056/OSJCL_V16N2_423.pdf?sequence=1)