

A "FRED FRIENDLY" ROUNDTABLE

FORD: All right. Ladies and gentlemen, welcome to all of you. We're delighted to have you spending some time with us here. Glad that you could share your lunch and your time with us. This panel is going to be a little bit different from the others that you perhaps have sat in on today or the ones that are scheduled for the balance of the day and into tomorrow.

The other panels as you can see are very precisely focused on specific issues. The idea here was to do something a little bit different, something a little bit more wide ranging. And as a consequence you'll see that the format we're going to follow here is very different.

This will be based upon hypotheticals. I don't know if any of you have ever seen these panels that we did for many years on Public Television on PBS. The idea is to take hypothetical situations that very clearly mirror real life situations and here we'll be talking about the Duke Lacrosse case, and to explore the issues that arise out of that. But by doing it based upon hypotheticals, the idea has always been that people are much more comfortable and open and candid talking about those issues. So that's how we will drive this today.

And it's also different in the sense that we're not going to focus on one aspect of it. We are going to try and touch on the issues that have arisen from every aspect of this case starting with students and athletics and university response to the charges that we'll see here, how the media responds to it, how the justice system, prosecutors, defense lawyers, judges. And the idea is to as I said touch base on the core issues that have arisen as a consequence of the Duke case.

It sounds like a fairly epic and heroic effort in an hour and a half, but we're hopeful given our panelists here that we're going to be able to touch on them enough to make this a worthwhile panel.

Let me do a quick introduction. You have in the brochures more extensive bios on everybody, but just so you know who we have here on the panel. I'm going to start on the far right, my right, and come across.

Peter Gilchrist is the District Attorney for Mecklenburg County in North Carolina. Next to Peter is Ellen Reckhow, and Ellen is the Chairperson of the Durham County Board of Commissioners. Beatrice Myers is next. Beatrice is the

Executive Producer of CourtTV News. Next to Beatrice is Ron Wellman, who is the Athletic Director at Wake Forest University. Dean David Levi, who is in the center here, the new Dean of the Duke Law School. Margaret Jablonski is the Vice Chancellor of the University of North Carolina at Chapel Hill. Kerstin Kimel is the women's head varsity lacrosse coach here at Duke University. Next to her Sonya Steptoe, just a marvelous journalist. Has written for Wall Street Journal, Sports Illustrated, Time Magazine. Elliott Wolf, former President of Duke Student Government, and a student here. And Larry McMichael is a well-known lawyer, trial lawyer, who is from this area here.

Now all of these folks have been kind enough to spend some time with us. Here's what we're going to do. They each will have different roles to play. We will follow along in this hypothetical scenario that I'm sure you'll all recognize. And here is what our hope is at the end of this. Fred Friendly, you'll notice that this is called a Fred Friendly Seminar. Fred Friendly before he passed away, widely referred to as the conscience of journalism. Fred had been Edward R. Murrow's producer. Indeed when I talked to his wife after the movie "Good Night and Good Luck" came out and she said Fred would've loved the fact that George Clooney actually played

him in the movie. Fred, the least vain man in the history of journalism probably.

But Fred had put these concepts together when he was at the Columbia School of Journalism, and we always liked to start them off with the direction that Fred gave us, the moderators, for these panels. And he said the purpose of this event today is not to makeup anybody's mind. Rather it's to make the agony of decision making so intense that you can escape only by thinking. And that's what the hope is that we're going to do during our course of time here today. All right.

So here's where we are. We are at Excelsior University. It's a very high-end, well-regarded academic institution, has a fairly solid athletic program. I am a freshman. It's the beginning of the term here and I've come to Excelsior because first and foremost its academic reputation, secondly because I've been recruited to come and play on one of the varsity teams here.

So I'm on campus now. It's been about the second day. I've sort of settled in. I've got a roommate. I've got my schedule. I've got my books. I'm a very serious student, and

truly my down time is spent with my books in the library.

I get an e-mail and the e-mail is from one of the seniors on my team and the e-mail is we're going to gather together in a room at the Student Center, all the team members. We want all the freshmen to be there just for a little sort of social get together.

Now, generally speaking I'm not a party kid. I don't like to go to parties. I'm not comfortable at them. And I'd rather, to tell you the truth, either be in my room or be in my library, and I've got to decide whether this is a good thing for me to do or not.

And Coach Kimel, I'm going to start with you first. Is this something that you like the notion of? The notion of your seniors saying let's get together and let's sort of welcome these newcomers onto our team.

KIMEL: Absolutely.

FORD: Why?

KIMEL: I think that the role of upperclassmen and seniors in particular they're the leaders of your team and you want them to take the younger kids under their wing especially at the start of the school year where there's so much going on and

kids tend to be a little overwhelmed both academically and athletically. You want to bring them in. You want them to feel assimilated. You want them to feel like they've got a support group around them, so yeah, that's something that's expected and normal.

FORD: I get another e-mail and it says okay, there's a little bit of change. This get together is going to take place off campus in a house that a couple of the seniors are living in. Now, Mr. Wellman, you're a former college athlete, college coach, athletic director. How about that? First of all do you agree with Coach Kimel that the notion of especially your seniors welcoming in the younger members, the new members, of the team can be helpful? Is there anything about the fact that now all of a sudden this get together is taking place off campus that concerns you?

WELLMAN: Not at that point, no. And I do agree with Kerstin that it's very important for the upperclassmen to mentor the underclassmen, especially the freshmen coming in. So often collegiate teams, athletic teams segregate the freshmen and they treat them as underlings and people who are not deserving of being on that team. We want to create a team atmosphere that is inclusive of all the individuals on the team. Having the function, and you haven't described what the function is yet, but having the function off campus does not

present a problem at this point. For freshmen going off campus with the upperclassmen, I would have no hesitancy about that.

FORD: All right. Elliott, you're actually my sort of resident advisor in the dorm that I'm living. You're a senior. You've been on campus for a number of years. And I kind of come knocking on your dorm door and I say, you know, I've got a question for you. I said I got this invitation here and it sounds to me like it's a party. It starts at 9:00 tonight. It's at some of the seniors are living off campus. I don't even know where this place is. I'm not really nuts about these things, but you're my advisor here, so is this something I should be going to?

WOLF: Both anyone who is on a sports team, anyone who is a student is going to -- it would be good if the upperclassmen in whatever they were involved in invited them to something to mentor them, to guide them in whatever capacity. And so this has not reached a problem for, for instance, for an RA to describe or give advice. It's not something that I would worry about specifically, because it's not peculiar to athletics. It's not something that any group should bawk at doing.

FORD: Well, here's what happens. One of the seniors sort of stops by my room just to make sure I'm going to be coming over and

I ask him what's going on tonight and he says it's nice. We do this every year and the whole team is coming. It's run by the senior captains. They rent the house over here. And we've got a bunch of kegs setup. I'll be a good gathering. All right.

Again, I'm 18 years old. Drinking age in the state where Excelsior is located is 21, and I'm not -- now I'm really questioning whether this is something I should be going to. Ms. Myers, I'm going to take you out of your role as a journalist. You're a parent. You have two college age girls. But I'm going to make you the parent of this boy. And he calls you up and he says mom, you know what? He says I got invited. The whole team apparently is coming to this party. It's off campus. The guy just told me there are kegs all over the place. You know, I'm not nuts about going there, but my advisor says it's a good thing. One of the guys said, the coach likes the seniors to reach out and bring everybody into this. What are you going to tell your child to do?

MYERS:

Well, I would be very hesitant to agree to allow my child to go to a party, particularly off campus where there was drinking involved being an 18 year old. On the other hand, I wouldn't want my child to isolated being in a new school. I probably would agree to let him go.

FORD: All right. Anybody going to say, because I'm going to say to any of you, you're my parents and I'm the kid. I'm calling you up, I'm saying everybody is going. All the freshmen are going. The sophomores are there. The seniors are running it. The juniors are there. Any of you going to suggest to me as my parent I shouldn't go just because I'm not comfortable with? Everybody --

MYERS: If you're not -- I think if you're really not comfortable then don't go. I think that's not -- that to me is a decision --

FORD: But if I'm the only freshman who doesn't show up at the party and this is the first gathering of this team and everybody is going down the list and saying everybody here. Where's Jack Ford? How come he's not at the party? Not such a great thing, is it? Elliott, what do you think?

WOLF: Well, it's not only that. If you're going to a party with a student group or an athletic team that you are a part of, any parent should have the expectation that that's better than just drinking randomly in another situation. And so if it's a choice between -- well, no, but I mean in all seriousness.

FORD: This is the honest responses, guys, that we're looking for.

WOLF: In all seriousness, it's much preferable, and I think from a student and a parental perspective, to socialize with people whom you know and whom you respect and whom presumably will

look out for your interests and your status and not just sort of randomly find your way onto something.

JABLONKSI: I'd like to answer on behalf of about one-third of the freshmen who tell us that they don't drink and that their parents tell us that they don't drink. And that if you ask them they would say go to the party and tell your friends that hey, I like being around you, I want to be with you, want to hang out with you, but I'm not into consuming alcohol yet, and I don't want to be pressured, and go and have fun.

FORD: So go. Don't have to --

JABLONKSI: But you don't have to drink.

FORD: You're part of the team. You're there.

JABLONKSI: Yeah. Yeah. And they should respect you and a lot of times they will.

FORD: Here's what happens. I actually take that advice. I come to the party, and it's the whole team, the whole team. Party gets started about 9:00. We're off campus at this house and the kegs are all setup and I'm fine. I've got a cup here and I've got a Coke and I'm walking around drinking that and I'm meeting all of the other teammates. And all of a sudden one of the seniors says all right, guys, back into the house. The entertainment is showing up. And I'm a little puzzled. And we all pack up, we come into the house. And into the house comes an exotic dancer. All right. Now, I'm really uncomfortable.

It's just not anything that I'm enjoying. It's not part of my background. It's not what I'm at college to do. What do I do now?

Elliott, do I walk out? Realistically, am I the one guy on the team who says I'm heading to the library, guys? I'll see you.

WOLF: Well, I mean, even if he wanted to leave, there are better excuses than I'm headed to the library. I'd say, I mean going back to one of Kerstin's comments is that if you're uncomfortable in any situation, you should not stay. But if you feel fine with it then you should. It's all about personal choice, personal responsibility, and that's not a decision that can be made unilaterally for anyone in such a situation. It's all about what they want. And so I don't know if I can give you an answer.

MYERS: I think too, I think the other thing is, and this is more my parent side, is that you would hope -- if my child was in that situation, I would want to think that I've done my best to expose my kids to or maybe giving them the latitude to be exposed to different things in their high school years so that when they go to college they're not really surprised by much, but at the same time I've given them the tools to make good decisions, to recognize, and really the confidence to

make tough decisions like yeah, maybe I don't use library as the excuse, but guys, I'm tired, I'm going to go home or I'm not feeling well. But I have the confidence to make those kinds of decisions if I'm truly not comfortable. Because I would've been one of the kids that would not have been comfortable in that situation.

FORD: Mr. Gilchrist, go ahead...

GILCHRIST: I want to back up here for a minute, and I would hope that one of the parents -- I am not a parent, but I would hope somebody would've mentioned the drinking and the drinking and driving particularly that might occur particularly if you're a youngster, had access to an automobile.

FORD: Well, let's put it this way. We're off campus, but my off campus is two blocks away from the confines, so we're all walking there. But we're all there and the kegs are there and now the dancer shows up, all right. Ms. Jablonski, how big a problem is this notion of this sort of peer pressure on campuses? The idea that, you know what, your whole team is doing it and you don't want to be the one who is not part of it.

JABLONSKI: Oh, it's a huge problem. It's not just on teams. It's in every social setting and every student organization. People want to be accepted wherever they are. You come to campus and you're thrown into a new situation, you want to make friends,

you want to be liked, so it's how you -- how you find your way is very important. Especially in the first month, six weeks, of school is very important.

FORD: Well, here's what's happening now. That party goes on and about two days later all of a sudden within the Athletic Department, your department, Mr. Wellman. You happen to be the coach of this team, Ms. Kimel. Excelsior is an enlightened university. We've hired a woman head coach --

KIMEL: Men's team.

FORD: For this men's team. So all of a sudden you hear through the grapevine that there was a party a couple of nights ago that your seniors, captains were having and people are talking about a problem there. You don't have the hard definition yet of this problem, but you're hearing something bad happened in this. All right. Let's start with you as a coach. What do you do when you start to hear those rumors?

KIMEL: Well, first thing you pull whoever's house it was, your captains, the seniors, whoever, your older kids in and you want answers. What happened? And I document what they tell me, everything. And you have worked hard to develop the kind of relationship with your kids that they will be honest with you and they understand. And as an adult in that situation, whatever the problem it is that you're going to present us with, you think about the entire spectrum of the problem from

it could easily go away to this is what it could be. And you make the kids think about that as you get to the bottom of things. And then, I think, based on what they tell you, you then, I think, get your superiors involved with both --

FORD: Would you get -- Mr. Wellman is your AD.

KIMEL: Yes.

FORD: Would you get him involved from the moment you hear the rumors?

KIMEL: It depends. I think it depends. I mean, I think it depends on what the rumor is.

FORD: Suppose you're not getting -- all you're hearing is you get a phone call from one of the assistants on another team and says, you know, I just want to pass this on to you. I heard some of our kids they were lifting today and I'm kind of wandering through, and all I heard them saying can you believe what happened the other night at that house. And the next thing they hear say is oh, man, are the cops involved. And that's all they know. And this coach says I just want you to know. These are your players, this house. What do you -- Mr. Wellman, what do you want her to do as the coach when she gets this phone call?

WELLMAN: To see her sports supervisor immediately and discuss what she has heard and compare notes as to what we have heard as well. And then develop a game plan as to how we are going to

approach this and how serious we believe it is at this point. And that will lead us to the next step that we will take, which will probably be to interview all of the student athletes on that particular team.

FORD: Do you have any problem with the notion of bringing these athletes in if you've heard, again, we don't know anything more than this now, but you've heard people talking about the police possibly being involved? Do you have any qualms about saying all right, let's get them in, let's sit down, and I'm going to talk with them, Coach Kimel is going to talk with them right away?

WELLMAN: Well, we would probably go to the police and find out if there has been a report filed, a complaint filed, or if they have any type of documentation on this incident.

FORD: Well, here's what happens. You actually get a phone call from the local chief of police and he says I'm going to need to talk to some of your athletes, because we've got a complaint here about a serious problem at a party two nights ago at an off campus house. And he says to you can't give you all the details, but I can tell you this. Right now we're looking at allegations of a sexual assault haven taken place at this party and we're taking it seriously. Dean Levi, I'm going to make you the Chancellor of Excelsior. All right. That promotion comes with either congratulations or

commiserations. We're not entirely sure yet.

But Mr. Wellman calls you up and fills you in immediately on this phone call he's just got. What sort of directions are you going to give to him, to Coach Kimel about what they should be doing at this point?

LEVI: I'd tell them to call Jim Coleman.

FORD: Is Jim here? Where is Jim? Going to get you. Don't go hiding in the backup.

LEVI: But there's a problem here. There's a criminal investigation that has now begun and the students are also within the authority of the university, but they also have the right to remain silent. And what you don't want to convey to the students at that point is that they must give up their constitutional right in order to maintain themselves as a student in good standing and on the team.

I think at this point you'd probably want to -- you may need to get a lawyer involved. You probably do want to get the parents involved.

FORD: Will you go so far at this juncture as to in essence do your own investigation? In other words, if you get the Excelsior University Counsel, all right. You give him a call and say here's the deal. I just got this phone call. I've talked to

our Athletic Director. I've talked to the Coach. They tell me this is serious and they tell me this is not a disorderly conduct charge. This is an aggravated sexual assault that we're talking about. They haven't told me how many people might be involved. They haven't given me any more details than that. And your Counsel says to you, well, you know what I think we ought to do. I think we should sit down and talk to every member of this team who was at that party right now. It's essential that we do that. Are you okay with that idea?

LEVI: There are problems with that. One problem is that if you're not every careful about it, you may be obstructing an investigation. Another problem is you're all going to be witnesses, everybody who is involved in that. You're now putting yourself into the middle of a criminal investigation. And the third is the problem I indicated before. You're setting up students to give up a right that they have, which is not to incriminate themselves.

So it might depend on the adequacy of the information base. So if there's been an earlier investigation as there has, a preliminary investigation, and depending on how thorough that was and whether I thought there was terrible gaps in our information, I would probably be inclined to defer.

FORD: Now, Coach Kimel, her instinct is, and, again, I'm a parent

of college athletes and this is sort of what you look for in their coaches, her instinct is that she is in some way a surrogate parent for these students on campus, and her instinct was I want to talk with them. Which, I'm sure, most people would say that's great. You're the coach. You should be talking with them. But are you saying maybe she shouldn't be talking with them?

LEVI: Well, I think there's a real issue there, and this isn't limited to this context. It's true with when an employer begins an investigation and employees come in and they think they're compelled to talk to you. You have to be very careful about that. So it does change the relationship the minute you have a possible legal proceeding, because in a way the coach has to say, you know, you don't have to talk to me and there aren't going to be any adverse consequences if you don't talk to me, but I'm trying to find out what happened here. Probably with that preface, I'd be okay with it.

FORD: Well, it's actually now gotten a bit more complicated, because what's happened now in the intervening time period, and we are understandably talking about what we should be doing as the university here, you get another phone call now, and now the phone call comes directly to you from the Chief of Police and he says, Chancellor Levi, I want to let you know an arrest warrant has been issued and it's for one of

the players on the team and that player has been charged with aggravated sexual assault. We are reaching out right now to the player or to see if there's an attorney, but we plan on moving on this very quickly. But you know what? I wanted to give you a heads up that this is now coming down. You now know that this has gone beyond the investigation stage. What do you do now? What does the university do now? And you know what? I'm going to send that over to you, Ms. Jablonski.

JABLONSKI: Well, this is where it gets really interesting, because it's almost like there's two different, very different, perspectives in the university system, and the student affairs people believe that the university has the right and the obligation to take action, because there's the individuals who most legal folks know -- I'm not trying to denigrate the legal people in the room, but you folks are always protecting the individual --

FORD: Especially if you're in a law school --

JABLONSKI: Right

FORD: You might run into... knowing your audience

JABLONSKI: You folks always are giving deference to the individual rights, but we have to give deference sometimes to the community rights. And in the -- when you think about who we are always out to protect, and especially in this day and age, the community is expecting protection. So if you look at

what happened in this case right now we would need to remove that individual from campus. So I think we would want to move to separate that person immediately from campus.

FORD: Okay. When you say remove and separate, that can mean a whole lot of things.

JABLONSKI: Yeah.

FORD: Specifically what are you going to do? Are you going -- is that student going to be suspended?

JABLONSKI: Probably.

FORD: Are they going to just be asked to live in a motel for awhile while this thing is being resolved? How does the university respond?

JABLONSKI: You can take any number of actions depending on the situation, so they could still go to class. It would depend on if this person was a fellow student, so if you could isolate the students from -- if they were both students --

FORD: Say it's not. Let's say the one -- you've gotten some information and what you're being told now is this, all you're being told, nothing more than this, aggravated sexual assault, member of the team --

JABLONSKI: Yeah.

FORD: And the victim, according to the police, was this exotic dancer who showed up. Not a part of the university community.

JABLONSKI: Okay. Then maybe I would consider leaving the person being

able to go to class, but have some kind of restrictions placed on them, something. Some kind of acknowledgement that they are being charged with a felony.

FORD: If you -- Ms. Steptoe, I'm going to bring you into this conversation here, and you're a member of this university community. All right. I'm going to take you back to your student days. Not that far back. Slightly. And word is now starting to get out about this and what the students are hearing is that the student who is charged with this is basically still here. Does that concern you at all as a student? The person is still there going to classes just like anybody else even though they've been charged with an aggravated sexual assault.

STEPTOE: A little bit maybe. Wondering if the person is a predator, that's going to come to mind. If I'm at some kind of risk. If this is part of a pattern of behavior. Maybe this person is kind of a potential campus rapist or something like that. Yeah, give me some pause.

FORD: Would you -- Ms. Reckhow, I want to bring you into this as your sort of community representative role here and not surprisingly this is starting to get disseminated out there. Nobody had hard facts yet, but they're hearing about a student athlete here who is about to be arrested, has been arrested and charged. Hasn't been officially indicted yet,

but has been arrested and charged with this, and you have very close ties to this university because of your role on the City Council here. What would you want? What would you want the university at this juncture? First step, criminal charge is filed. Nothing more. What would you want the university to do?

RECKHOW: Well, I'd want the university to get as much information as possible, although listening to the Dean maybe that's not appropriate, but I would expect that they would be attempting to get as much information as possible. And to follow all of the processes that they have in place to protect the student body and to basically do the right thing. So it's a combination of gathering information and assessment, but you want processes followed so that no judgment is made inappropriately. So you've got to have that fine balance of getting to the point where you're as comfortable as possible with the actions taken.

FORD: Well, I'm going to takeover the role of Chancellor for a moment, Dean Levi, so I'm going to take you out of having to make these decisions. And I've decided, I've consulted with Ms. Jablonski, who is my Vice Chancellor for Student Affairs, and I made the decision that I need to make a statement here for this university, because this is starting to get out there and it's starting to generate a great deal of concern.

And I've decided that what I think the right thing to do is given the fact that this person has been charged with such an aggravated crime is I'm going to say let's -- I'm going to suspend him for now. Suspend him pending the resolution, the final resolution of whatever the legal proceedings would be.

Mr. McMichael, I'm going to make you the attorney for this student has been charged. Do you have any problem with me as the Chancellor saying you know what, your client -- you give me a call and I say I understand you're representing. I'm going to tell you what I'm doing. I have concerns as to how this is being viewed in the community, and I think the right thing to do for everybody including your client is to say let's just separate him from the university for now. You work out these problems and then we'll talk again at the end. Do you have a problem with that?

MCMICHAEL: Huge problem.

FORD: Why?

MCMICHAEL: You're fueling the presumption of guilt. That's what you're doing. There's nothing -- all that's happened is somebody has gotten arrested, and a person is innocent until somebody proves him guilty. That hasn't happened yet. The process is just starting. And the more that public figures weigh in and do things that the public perceives as indicating that

something bad happened that this person might be guilty the worse you're making it for my client.

FORD: But here's my problem. I understand what you're saying for your client. You represent one person. I'm the Chancellor of this entire university. I have 8,000 students who belong here. I have any number of faculty, staff, and administration and thousands of alumni out there. That's who I represent. So although I recognize your concern for a presumption of innocence for your client, candidly that's not my concern. My concern is my university, and I just got a phone call from a terribly upset parent who says my daughter lives next door to this guy in the dorm who has been charged with an aggravated sexual assault on a dancer and he's there. She comes in at night, he's in his room. She wakes up in the morning, he's in his room coming in and out. You know what, I pay you 40 some thousand dollars a year at the university not so that my daughter can be rooming next to a rapist. That's a pretty serious concern, don't you think?

MCMICHAEL: Well, it is, but look, I have a daughter who is in college too, and I think you have to take some prudent actions, but I wouldn't make a public statement and I probably wouldn't make a public statement that included things like a suspension, which will be viewed in the public as an indication of guilt on your part. Because you have no idea whether this guy is

guilty or not.

FORD: Ms. Jablonski, how about that?

JABLONSKI: What might make more sense in this situation is to have what I was saying earlier is to place some -- come up with some kind of negotiated restrictions. Have him move out of the residents' hall, work some, you know, be able to live somewhere else.

FORD: Let's take it a step further. Let's take it a step further.

JABLONSKI: But complete his academic part, so he could --

FORD: Let's take it one more step.

JABLONSKI: Not be harmed academically.

FORD: See if this -- yeah. See if this has an impact on your thoughts, on any of your thoughts. The matter has now been presented to a grand jury. The grand jury has heard the testimony and made a determination that they are going to return an indictment. So this young man has now been charged by a grand jury with aggravated sexual assault. As part of the process, a trial date is going to be set down the road. It's going to take awhile to go to trial as these cases usually do. All right. Does that, Ms. Jablonski, from your perspective does that change this calculus at all?

JABLONSKI: Technically none of us should be commenting on an individual's judicial status publically.

FORD: Right.

JABLONSKI: It's technically --

FORD: But is that --

JABLONSKI: A violation (inaudible).

FORD: But if what you're doing is -- but here's --

JABLONSKI: This whole situation gets out of control in the media, but --

FORD: I understand. But as I Chancellor I say, okay, here's what we're going to do then. We're going to issue a statement that says we have the utmost respect for this young man's constitutional rights and protection and nothing we are going to do is designed or should be read as any form of a condemnation for him. However, we represent Excelsior University and we feel that it is in the best interest of this university without condemning him in any fashion to separate him from the university until the legal process has run its course. What's wrong with that? Anybody have a problem with that? Anybody else on the panel?

MYERS: I'm the parent of two college age daughters and I would be the parent on the phone immediately to the head of the school saying my daughter lives in the same dorm, lives near this boy who has been accused of what I think is a very vicious crime, and I would be really, really concerned about that, and I would expect the university to take some steps to protect my children.

FORD: Elliott, what do you think?

WOLF: Well, in many instances this accused person's continued presence on campus would not only be disruptive to the university community, but also to them. It's going to be difficult if the media get involved or whatever happens, and so it would -- if you could work out removing that person from campus in such a way that they wanted to take a little break while this was going on. No. But in all seriousness --

FORD: That would be the ideal resolution.

WOLF: No. But in all seriousness do you want to be in the middle of classes and --

FORD: And I have that conversation with Mr. McMichael, and I say maybe it would be in the best interest of your client to take some time, you know, go home, take a course at a local community college. Do something. Take some time off. But I'm suggesting this not only for my own self-interest as the Chancellor of the university, but also for the interests of your client. But your client says to you no, I don't want to do that, because that's going to look as if I'm admitting something when I leave. All right. So that's -- Mr. McMichael comes back to me with that response. As the Chancellor of the university, my options are shrinking dramatically.

How about this? How about if I say, and Mr. McMichael let me ask you this and Mr. Gilchrist the same thing, you're my

Counsel and I say I'm torn here. I've got to act. I'm getting calls, e-mails from alumni, from parents. The university is starting to grind to a halt here. How about this? Before I suspend him, let's do our own full blown investigation here, and I want you gentlemen to start bringing members of the team who were at the party in, start asking them questions. Put me in a position where I can have a factual basis for whatever determination I'm going to make. Is that a good idea, Mr. Gilchrist? Is it a workable idea?

GILCHRIST: I wouldn't do that. I would not put the university in that position. I think it's always a delicate role when you're a prosecutor and you've got a school in your jurisdiction dealing with the issues of students and crimes. I think the concern that I would have --

FORD: Would you as a prosecutor, all right. Let's say you're the prosecutor in this county. You know this case is now in your office. The indictment has been returned. Do you want me as the Chancellor to be running my own investigation here where I've got lawyers sitting down and questioning people who could be potential witnesses in your case?

GILCHRIST: I would be concerned about an obstruction of justice by university personnel who were intervening in consulting with the students.

JABLONSKI: Shouldn't the university though at least ask enough questions

so that they can make a decision about what to do with the team? I'm concerned that we're only focusing on the individual here. What are we supposed to be doing with the team?

FORD: How do we get that information? Mr. McMichael?

MCMICHAEL: Chancellor Ford, first of all I completely agree with my good friend, Mr. Gilchrist, at the other end of the table. You don't want to be in a position where you're doing any investigation here at all, because the minute something goes wrong, it's going to become an obstruction problem. It's going to become a cover-up. It's just not going to look good. I'd stay out of it from an institutional standpoint. I'm your lawyer.

FORD: But how do I -- I understand what you're saying.

MCMICHAEL: How do you get information? How do you get information?

FORD: How can I --

MCMICHAEL: Call the police.

FORD: If I don't do that, I am left in a position as the Chancellor of this university where I need to make a decision, but I don't have a factual basis that I can point to --

MCMICHAEL: Right.

FORD: To anyone who might disagree with my opinion. So where do I go? How do I gather information?

MCMICHAEL: Here's what you do. You have your lawyer call the prosecutor,

Mr. Gilchrist, and get the facts from him and then have your lawyer call me, the lawyer for the student, and get the facts from me.

FORD: How many facts are you going to give me, Mr. McMichael?

MCMICHAEL: It depends on the circumstances.

FORD: All right.

JABLONSKI: That doesn't work in real life.

FORD: Is that a fairly lawyerly response?

LEVI: I don't think you're going to get facts about the ultimate event at the house. I think that would be very difficult for the Chancellor. The police are not going to want to submit to your interrogation and they undoubtedly refuse to do so. What you're trying to get are facts about danger to the community. Now, that is something that the court system should've addressed during the bail hearing that would've occurred after the arrest. So I think if you focus on that question is there danger to the community, you probably have the means to get facts about the student, the student's character, and then try to see whether there's a possible compromise. You probably have a pretrial service officer or a third party custodian involved. There are ways to deliver the student to the class and then pick them up after the class. There probably is a continuum of things one could do. You might address your fact finding to that.

FORD: Doesn't it though put me in a situation as the Chancellor of this university where at some point in time I'm going to have to make a fairly profound decision without all of the facts? I mean, I'm not going to get from Mr. Gilchrist. He's, as cooperative as he is going to be with me, Mr. Gilchrist, you're not going to give me all the details, all the witnesses, what -- their names, what they have to say, right? And, Mr. McMichael, if you have a client, are you going to let your client sit down with me and say let me fill you in on everything that happened that night?

MCMICHAEL: No chance.

FORD: Yeah. That's what I thought. So am I not in a situation as a Chancellor of the university confronted with this type of problem where I'm going to have to make, as I said, a significant decision and I don't have all the facts? Sonja? Does it look like that's how it's playing out here?

STEPTOE: I'm just waiting for my chance to put cameras everywhere on campus and then follow everybody and interview everybody about what they know.

MYERS: That's when the media shows up.

FORD: In a few moments we're going to get to you. Well, how about this as an alternative, because does anybody disagree with me that that's a serious dilemma for me as the Chancellor?

WELLMAN: That is a serious dilemma, but I think you can get the facts

or more facts than may be available to you by going to the Counsel, and that is the Coach and the Athletic Director or the Sports Supervisor of that particular team. Our experience has been that student athletes open up to their coach and they confide in the coach. And the person who knows more facts about that incident than anyone else would be the coach.

FORD: Do you want them, Dean, if you were the Counsel to this university, do you want as good as an idea it might be for Coach Kimel and as close as she might be with these players, you now know that there's an indictment out there. Do you want her to be sitting down with each of these players who undoubtedly will be at least in some level of witness here and asking them questions?

LEVI: Probably not. It's probably not a good idea. And they'll all have lawyers.

FORD: And yet do you disagree with what Mr. Wellman says that that's probably the best way to get more information?

LEVI: It's probably the best way to get more information, but it puts you in a position -- are you going to make a preliminary finding of guilt or innocence and announce it to the world? Is that your function?

FORD: Yeah. And that's the problem I'm having as the Chancellor here.

McMICHAEL: Let me clarify. Often times the coach will not pull the players in and inquire as to what happened that evening. The players will voluntarily come in and talk with the coach and seek guidance from the coach. So the coach, I don't know of a coach who is going to reject that opportunity. That's what -- the coach is a surrogate parent. The coach is going to listen to what the players say, and the coach is in all probability going to provide some advice even if it is see a lawyer.

FORD: How about this? I think we're all recognizing the enormity of this dilemma that I find myself in as the Chancellor of this university. I am being torn by my concern for the constitutional rights of Mr. McMichael's client. I don't want to appear to be prejudging him. Yet I have my own constituency that I need to respond to, and that's my university community, my faculty and staff members, the alumni, and I have to do something that is going to terribly disappoint and anger some of these if not most of these factions.

How about this? Would it be easier as a university if we simply had a policy, an announced policy, a zero tolerance policy that would be in our handbook? Every student who enrolls at our university would be advised of this as would their parents. And it says if you as a student of Excelsior

University are arrested and charged with a felony, our policy is you shall be, not may be, you shall be suspended until the legal process has resolved itself. How about that as an idea? Is that a good idea? Anybody? Bueller. Anybody?

MCMICHAEL: From my standpoint, I have no problem. It's completely neutral. It's automatic. So it doesn't say anything about my client.

FORD: So that, if that was the policy and I as the Chancellor was able to stand up and say to anybody who was asking me questions, including the conversations I'm sure I'm going to have with Ms. Steptoe very soon, I could say this has nothing to do in a factual sense with this student. This is our policy and we adhere to it. And it could be a professor's son who gets charged with a felony. They're gone until it's resolved. Does that work? Elliott?

WOLF: Well, the issue is if you have -- if the university provides law enforcement or whomever else a means to punish students by simply arresting them and charging them. For instance if the law enforcement officer, I'm particularly going back to the here and the now, the Durham police do not have a particularly good relationship with Duke students, and so if you provide them up front with a means to take action and significant action which comes through suspension by initiating a criminal investigation or something the question

is does that affect the motivations of the police officer? Does that encourage the police to treat the students differently because the outcomes will be different by their very definition as students? And that's something that the student community might have a problem with. But from your perspective as Chancellor it's not something that you'd necessarily worry about.

FORD: It simply -- it makes it certainly easier for me to help to manage my university. But what does it do -- what does it do to that student who happens to know they are absolutely innocent of what they've been charged with? What does it do to that student? And we know statistically -- right, Mr. Prosecutor, statistically give me a rough percentage of people who are indicted for crimes who ultimately they're plead guilty or are found guilty? 90 percent? High 80 percent?

GILCHRIST: It's much -- in our office it would be much smaller than that. We probably dismiss 50 percent of the cases.

FORD: Well, let's talk about once it's gotten to the indictment stage. Once somebody has been indicted by a grand jury, roughly speaking?

GILCHRIST: We would still dismiss unfortunately a substantial percentage.

FORD: So there are going to be then people who either are dismissed

for procedural reasons or whatever, but there will be some. I can tell you I tried cases as a prosecutor and defense lawyer for almost 20 years. I've tried a half dozen death penalty cases. I had probably four cases I can remember of truly innocent people, and they are actually the most gut wrenching cases you will ever have if you're a defense lawyer. But the fact is they might be out there. So what does it do to somebody who is and knows they're truly innocent and they know I'm getting thrown off of this campus and I can't even defend myself yet? Isn't that a little troublesome, Dean Levi?

LEVI: It's troublesome. And during that pretrial period the defendant is in a very disrupted condition and it makes it difficult to defend the case, so it is serious.

FORD: There's another thing going on on my campus here, because obviously we've recognized how difficult that decision can be for the leaders of the university now. Another thing going on and I have the -- I'm one of the professors and, Dean Levi, I'm going to put you back in as the Chancellor here for a moment. And I drop in to visit you and I say, you know what, Dean, I just want to -- Chancellor, I just want to give you a heads up on something. I've been seeing how this has all been playing out and we know that just two days ago a grand jury returned an indictment against this student here and I feel

very strongly about it. As a matter of fact, I just want to let you know I put together a letter to the editor that I want to send to our local newspaper here, and I am just absolutely demanding that this student should not only be suspended, should be expelled from this university, should have never any contact with it at all, and indeed I'm demanding that there should be an investigation into Coach Kimel's program here for having a party such as this. What do you think of that? What are you going to suggest to me?

LEVI: I'm going to suggest that you not do that.

FORD: Well, there's a surprise. Why not?

LEVI: Well, because you start to create an atmosphere around the criminal case. It's the same reason that I'm reluctant to undertake an investigation and try to make a prejudgment about whether this happened or not. The predicate of that letter is it happened and this kid is guilty and there's a problem in the Athletic Department. But that's yet to be determined yet. So that letter can be written but later, later.

FORD: But if I say I understand that and I appreciate your approach on this, but you know what? It's what I truly and deeply feel, and I'm part of this university and I think I should have the ability and the opportunity if I want to express my thoughts, and this is what I feel about this to get that out

there. And thanks for your advice, but I think I'm going to do it anyway.

LEVI: I don't suppose I can really stop you from doing it. I think I could ask you and perhaps could instruct you to make it clear that you're not speaking on behalf of the university.

FORD: How about what I mentioned to you is I forgot to tell you in the beginning I've got 70 friends who are also on staff here who feel the same way I do, so we've decided to put this out over top of all of our signatures here as professors at this Excelsior University. Does this disturb you?

LEVI: Oh, it does. I mean, this is a particular attack on a particular student making an assertion of guilt, asking for the student to be expelled, and the program to be investigated because of what happened when we don't know yet what happened. That would disturb me a great deal.

FORD: Don't we have a sort of a curious confrontation here of constitutional rights? We have on the one hand -- let's start. We have a university which is known at best as a marketplace of ideas. If not at a university where else can you come to express thoughts, to disagree with people. So that's our umbrella here. And we have on the one hand Mr. McMichael's client who has his constitutional rights. He's presumed innocent unless and until he's proven guilty beyond a reasonable doubt. But I'm a professor and I have certain

free speech rights also. So how do we resolve this conflict?

LEVI: It's through persuasion. I would have to think that with a letter that extreme perhaps as the Chancellor I could meet with the 70. It just seems to me -- yes, there's free speech, but there's also ill-judged speech and that's what this would be.

FORD: My, again, friend and mentor, Fred Friendly, used to say there is sometimes a significant difference between what you have a right to do and what is the right thing to do. Would this be one of those instances?

LEVI: I think so.

FORD: But do you think you'd be successful in convincing me and my 70 friends?

LEVI: I'd like to think I would. But you might assume that I won't.

MYERS: It would depend if they have tenure or not.

FORD: All right. Ms. Steptoe, it's time for you and I to have a chat. You have started to hear, we're backing up a little bit now. All right. Before this indictment has been returned, before even official charges have been filed.

STEPTOE: Same night as the party as a matter of fact.

FORD: But you're not that good. But I have to take that back. She is that good. You hear -- you're a reporter on the local newspaper. It's a well-regarded newspaper. Has always cherished its image of investigative reporting. And you get a

phone call from somebody within the Police Department and they say Sonja, I want to pass on something to you here. Word is around here that there was party and it had something to do with one of the teams over at Excelsior University and that they hired a stripper and she was raped. Just want to pass it on to you. What are you going to do now?

STEPTOE: Start calling the members of that team who might have been at that party to find out what happened.

FORD: Now, do you -- the team members range from 22 year old seniors to perhaps 17 to 18 year old freshmen. Any difference between who you're going to call? Do you have any problems whether it's the 22 year old or the 17 or 18 year old?

STEPTOE: Yeah. I'm going to start with the younger ones.

FORD: That's why we wanted her here with us.

RECKHOW: That means she's going to call you first.

FORD: No. No. No. All right. So you start making your phone calls and at this juncture you're not getting any answers. People are just either not returning your phone calls or just saying I'm sorry I can't talk about anything. Are you going to place any calls to me as the Chancellor of the university?

STEPTOE: Not yet. I'm going to work outside the official -- I'll have one person working outside the official university channels assuming I've got a colleague. And then one person waiting to start the official -- the questioning of the officials. But I

want to find out as much as I can independent of maybe alerting the university apparatus to what's going on if they don't already know it, because I want to jump on them. I want to get to people before the university has had a chance to get to them and tell them what to say or to shut them up.

FORD: Let's say that on the newspaper now -- you know what? You're not the local newspaper. You work for a national publication and you get the same phone call from a friend of yours and they say to you I'm sure you're familiar with Excelsior University, very well-regarded school, and they tell you the story of what they're hearing. Is this a story that from a national perspective you'd still be interested in starting to dig into?

STEPTOE: Yes.

FORD: Why?

STEPTOE: Because of the history of misbehavior and shenanigans either of both alleged and proved by college athletes.

FORD: Let me stop you for a second. Suppose this was a fraternity party not a team party. Is it less of a story, less interesting to you?

STEPTOE: I would -- I don't know yet. I don't know enough facts yet. I'd still probe it a little bit. Make some preliminary decisions based on whether the school is Division I, Division II, Division III or how big the school is. Let's say that.

Let's take it out of the realm of sports. How big the school is, its national reputation. Whether if this is a school that has a history of misbehavior by fraternities. How many don't? Then it's highly likely that I'm going to look into it just to figure out what the facts are. If it turns out it's an even juicier kind of tale than just the run of the mill fraternity gets in trouble with maybe -- maybe attacking an exotic dancer that might be interesting, but it might not be interesting on a national level. A lot is going to depend on the prestige factor of the school involved, the reputation.

FORD: Ms. Myers, how about you? You're the Executive Producer of a cable network, cable news network, and you get the same phone call from a source that you have. Is this something that is of interest to you in the cable universe as a story?

MYERS: It would become a story very, very quickly in the cable universe for a variety of reasons. You have a case here that involves sex and violence, privilege, race --

FORD: We don't have race yet. We'll get to that in a moment.

MYERS: I stepped ahead. I will step out. But it is -- you've got all the elements that make this a national story and in response to your question about fraternity versus a sports team, if it had been a fraternity party, it would be front page news and everybody would do it. The fact that it involved a sports team it's now front page news on every sports newspaper, on

Sport Illustrated, sports radio is talking about it. So the story just gains enormous attention. And the moment a crime was committed and there was an investigation it becomes a story, so at some point it escalates into a now shown news story. And you have a lot of -- you don't live in a universe alone, so depending on what the other news stories at the time, it may get bigger play than if, you know, if it happened on September 11th it probably wouldn't have gotten a lot of play. But now it will get enormous play and it grows.

FORD: If you hear -- Ms. Jablonski, you're, again, you're the Vice Chancellor. You are sort of my eyes and ears as the Chancellor. You deal with the students all the time. And you're hearing that phone calls are being made, all right, from Ms. Steptoe's publication, from Ms. Myers' cable network to people within the community, and I say to you what should I do as the Chancellor here. Should I reach out for these people? Do I try to head this off? Do I take phone calls? Do I make comments? Do I not respond to anything at all? What's your advice to me?

JABLONSKI: Well, there probably would've been several preparation meetings well before that time. It's interesting there's not a PR person from the university sitting on this panel, but -- because that's a key person, key role that would've already been playing out how we were going to respond. And we

would've been thinking about what should our response be for the team members and all the parents involved, because there's 25 - 30 sets of parents that we're going to have to be dealing with and having a conversation with all the members of the team and their parents --

FORD: Right.

JABLONSKI: Because they're all going to be calling us too.

FORD: And how detailed should that conversation be? When I start getting phone calls -- and at this juncture, all right, we're early on. There have not been arrests made, but word is out there that there's a serious investigation going on and I am now -- I'm a parent of a team member --

JABLONSKI: Yeah.

FORD: And I'm calling for the Chancellor and the Chancellor says to you take the phone call for me, would you.

JABLONSKI: Yeah.

FORD: And I'm saying I need to know -- I've talked to my son. He says to me he had nothing to do with it. He doesn't know if anybody else did anything. He doesn't think so. But he's getting phone calls from media members. I want you people to get out in front of this. I want you to take the lead at the university to get it away from my son here and I want the Chancellor to get out there and to make statements and to be doing things so this thing gets handled. Is that what the

Chancellor should be doing?

JABLONSKI: The first rule is always protect your Chancellor. As a matter of fact, I was told that during my interview. So you always have your statements prepared in advance and so the Chancellor would never be put out front the first day or two. Someone else is always put out front first. It's usually the PR person or the Vice Chancellor, whoever, the Athletic Director, would've been put out front first. And should be realistically, depending on the level of the situation. But once it starts to escalate then the Chancellor or President does need to step out, make a definitive statement, say what the university is going to do, try to calm it down. And part of the calming it down is to say what you're going to do with the students involved, what you're going to do with the team, and that's where I still think we're making a big mistake by not making some kind of statement about the team. And then say to everybody we need to take some time and give us time to let it play out. And media, please go away from my campus.

FORD: Okay. I'm guessing that's pretty much not going to happen. Is that going to happen?

STEPTOE: Well, I'd be nervous about being charged with trespass or violating somebody's rights, so I'd start to get worried if the university issued a statement like that. As a responsible journalist and an editor I would, but that doesn't mean I

can't use the phone.

FORD: What about that request to give us a little time?

STEPTOE: Tell it to somebody else. Deaf ears here.

KIMEL: I mean, I think it's important, I mean, number one that you from an Athletic Department standpoint and the actual kids that they do not say anything. Number one, I mean, this becomes a huge distraction for them in their day to day life. And potentially given, you know, depending on the situation it perhaps becomes a hostile situation and environment on campus if there are things being said about the team or alleged about the team in the media and what not. So I think to me especially if the team is engaged in team activities where people can see them and they're visible, number one, they don't speak to anybody. There is no press at practice, because you can close practices, and that's it. I mean, I know that's easier said than done, but --

And I think the other thing is that you -- I know there are means to do this, but you try your best to remove any information off of accessible -- off of the internet, phone numbers, which, you know, things where the kids cannot really be accessed, and then I think you also consider the fact of people are on campus around the dorms, you might want to consider security.

FORD: How about -- and I understand what you're saying and I think from a coach's perspective that's all good advice. But let's talk about a bigger picture. And, Mr. Wellman, let me ask you this as the Athletic Director. Your coach is saying that's what I want to do. There's an expression in politics that perception becomes the reality, and if you ask members of the public, and this is always one of the difficulties when you're picking a jury for cases whereas you as the defense attorney you know that your client is not going to testify, you know that members of the public generally think that if you didn't do anything wrong then you should be perfectly comfortable talking and explaining and answering questions and doing any of that. And if you won't talk that must mean something, and it must mean something sinister. So what advice are you going to give to Coach Kimel here about her team? Do we do all of those things that will indeed protect these people as young students, but at the same time it's going to make Ms. Steptoe and Ms. Myers saying I got a lot more questions to ask and now I'm really interested in what went on here, because nobody is talking to me and if nobody talks to you, that sends up a flag. Does it not?

STEPTOE: And prompts a story.

FORD: And prompts a story. So there's a story there just in the fact that they're not talking, right? I mean, that itself is

a story. So what do you do then for your Athletic Department that on the one hand protects your student athletes, but -- immediately, but on the other hand does something about protecting this -- against this perception that says look, they're circling the wagons, something must have happened?

WELLMAN:

Let's be clear. The story is there. Whether the student athletes talk with the press or not, the story is going to continue. So the fact that we might have the student athletes remain silent does not cause the story to go further in my opinion. If the student athletes talk with the press that story is still going to be there and go forward.

I think we have to be very careful. You said something earlier about getting out front of this story. I think that's a dangerous thing to do to get too far out front before you're knowledgeable about the facts of the case. You're putting yourself in a position where you may be sorry that you said something. So we do that. We just go with a case at its own speed and the steps that we take to assure the privacy of our student athletes and protect them as much as possible we have one spokesman, and it's not a student athlete, and it's typically not the coach. It is typically the Athletic Director.

FORD:

Well, things have changed a little bit here. And one of the

things that has now gotten out as this investigation has moved along is that the team member who is the suspect here, young white man, the dancer is a black woman. What does this do to your story now, Ms. Steptoe?

STEPTOE: It's -- I'd note it. But --

FORD: Does it make it -- does make it potentially a bigger story immediately? Do you look at this now and say whoa, this is now ready to go off the charts?

STEPTOE: No.

FORD: Why not?

STEPTOE: It just doesn't for me. I mean, you know, multi-racial sexual assaults happen all the time. I don't have any other facts to make me think that it's, you know, that this is suddenly some kind of test case or cautionary tale or anything else about the interplay of race and sex.

FORD: What about -- Ms. Myers, let's talk about our cable universe, all right. And the -- things have changed in the news world, the news universe, over the last 20 years or so. How about in the cable news universe? Does the introduction of that element we have -- now we have, again, allegations, but we have allegations that involve as you mentioned before privilege, this is a prestigious university, violence, the notion of a "jockocracy" that is talked about often times, and now you have race that enters the picture. Does that make

it a bigger story in the cable news universe?

MYERS: It makes it a bigger story, I think, in the news -- as a news story, but in the cable -- in the cable news industry you have hours and hours of programming that has become opinionated television and you have -- when you add race to it, now you have community leaders on both sides representing both sides of this issue coming on and giving their opinions on hours of programming. And that as Ms. Steptoe says it fuels the story and the viewers start to -- once they latch onto a story like this, it continues.

FORD: Does it fuel your story a little differently than hers? She will be writing articles for this national publication. Perhaps if it's a big enough story, one a day, a couple of columns maybe.

STEPTOE: Uh-huh (yes).

FORD: You are the Executive Producer of a -- I'm going to make you Executive Producer of a cable network that is a 24 hour news channel. You need to fill 24 hours of programming seven days a week. So does this then start to drive your coverage and in many ways take over your coverage because of these elements we talked about?

MYERS: This story in the cable news world will play out 24 hours a day seven days a week, and you'll get -- you will get opinion makers to come on on both sides of the issue, and most of

your programming then will center around this one story. And you end up reporting what other people are reporting on this story unlike -- when you cover a story in print, I can interview somebody for four hours and then take two lines that will appear in my piece. On television there's a limited time, you've got a limited attention span of the audience, and you put people out there who are going to take positions on this and that just fuels the public opinion.

FORD:

Let's talk about the reality of putting people on for these shows to cover this now. You're the Executive Producer of this show and I am your booker, the person that lines up guests for you. This now is starting to get to be a big story. And I say to you I've got two people here that I think we want to consider. You have one slot and you need to get that filled for some program you're doing. And I say to you the one is a law school professor, very intelligent, well credentialed, very reasoned, but said to me, you know, I'm not real comfortable this early in the game staking out a position here as to whether this person is guilty or not. We have presumptions that attach. We have constitutional protections that attach. And that's the one. And I say to you, here's the other guest I have. This guy said to me essentially, you know, I'm okay getting on your air and saying this kid should be -- he's guilty right now. There's

no question about it. He should be thrown out of the university. This kind of thing can't happen in this community. We need to send a message. Guilty, send him to jail, close down the sports program, and let's investigate the whole damn university. Who are you going to put on the air?

MYERS:

I knew you were going to ask me that question. The reality is you're going to put people on who are good television, who are good talkers, who can make their point, people who will stake out a position and get in your face with it. And if you can get people on both sides of the argument to debate each other on television then you've got a great show. But if my booker tells me that this is a very knowledgeable person but probably is not going to be very good on television, my job is as television producer is to put the person who I think is going to make good television. And having -- working at CourtTV, most of the guests that we put on our show are lawyers, so we have the advantage of putting lawyers on. As most people know, lawyers are pretty good talkers, so we have a wide range to choose from. But in the end news is a business, television news is a business, and it's ratings driven, and you're going to put on the best television people that you can in order to drive ratings.

There was time in CBS many, many years ago when the President of CBS would say to the News Division, I'll worry about making money. You guys just worry about doing the news, and I will make money for the company. That's not true anymore. Television news is a business and cable news particularly is all news 24 hours a day. So you're going to put on what you consider to be the best television. Personally, and especially CourtTV which tends to be more traditional the way we cover news, we do -- I will not put people on who are not credentialed to give opinions. But I can't say that other cables operate the same way.

FORD: You handled that very delicately.

STEPTOE: Now, thanks to Beatrice, I'm now getting heat from my editor. Why don't you have all this stuff that I'm seeing on the air all day long and all night long?

FORD: And why don't you? What's the answer to that?

STEPTOE: Because I'm trying to be disciplined and I'm trying to exercise some prior restraint of my own about this. So I've talked to that lunatic who is on the air saying that he's guilty, close down the university and then conduct an investigation of everything --

FORD: And curiously that lunatic has appeared on just about every other cable network.

STEPTOE: Right. Right. Why -- I'm not seeing him quoted. And you're

not because he's a lunatic. I am talking to that professor at the law school who is telling me it's too early to make a determination. But when I give you those quotes, you're saying this story is sort of ho-hum, but now you think there's a story, but this guy is a lunatic. We can't base our story on --

FORD: But isn't our reality and what it's become, and I'll introduce some editorial comment here, different from when I started in this business, when you started in this business, when Beatrice started in this business, it has changed, has it not?

STEPTOE: Yeah.

FORD: We're now, you know, it's -- Jefferson said opinion is power. The fact of the matter is opinion has become the power that drives, as Beatrice said, it drives ratings. We talk about the Fred Friendly Seminars we used to do. We don't get them on PBS anymore, because we can't get the funding because they don't drive ratings. If you had somebody that would throw chairs in the middle of it, maybe you'd get it on. But is that not the reality now that Excelsior University and everybody else involved with this has to deal with?

STEPTOE: Yeah. And so for a journalist the response -- it becomes your responsibility to bring some soberness to this process and say, all right, you want me to give voice to this very heated

sort of opinion about this, but I've got to temper that with somebody like a James Coleman or somebody like a Paul Haagen along with all of these other raging voices to give the readers some perspective, a fuller view of what's at play here that -- and convey the sense that no one really knows yet what's going on and everybody is grappling with not only how to deal with this issue from the university level, but also at the community level. The community is divided about it. But just paint that whole picture and just don't give, you know, a sort of black or white stroke to it.

FORD: Well, what has happened now is this. Grand jury has returned an indictment and I am the prosecutor handling this case now. It's in my county and I've decided that I'm going to -- I'm the county prosecutor. I'm going to handle this case myself. Are either of you, Ms. Myers, Ms. Steptoe, are you going to give me a phone call?

STEPTOE: Yeah.

FORD: And what are you going to ask me? Let's have the conversation. What are you going to ask me when you call me up?

STEPTOE: What's your case? Tell me the facts as you know them. What happened?

FORD: Are you truly expecting me to actually give you these facts?

STEPTOE: I'm giving you the opportunity, yeah. Because it's also a

fact finding for me. I mean, I want to know what you've got.

FORD: How much, Mr. Gilchrist, how much are you going to give if you're the prosecutor in this case and you get a phone call from folks in the media, how much are you going to give them in the way of details about your case?

GILCHRIST: Nothing.

FORD: At all?

GILCHRIST: Nothing. I would say we're going to try our case in the courtroom and not in the media. And I would make a comment that I think Duke got off on the wrong foot in this matter. I think any prosecutor, most prosecutors are elected. They have community contacts, and if they've got a university or a college in their jurisdiction, they probably have established some sort of a relationship with that school early on. I mean, students just get in trouble on a regular basis for all sorts of things big and little

JABLONSKI: Not ours.

GILCHRIST: Big and little. I mean, these are problems that we have to deal with and we know. And so I think a responsible prosecutor is going to early on try and decide do they have a strong case or is this a train wreck that's going to fall apart at the last minute.

FORD: Here's what happens. You both, Ms. Myers and Ms. Steptoe, will be delighted to know that Mr. Gilchrist is no longer the

prosecutor. I've now taken over once again the job. And here's what I say. You call me up, you come on in. You've got your camera, you've got your pen and pencil, and I say come on into my office and sit down. And you sit down in front of me and I say, here's what I think about this case. This man is absolutely guilty of this crime. It was a horrendous episode. It's an incident where he took advantage of not only power physically, but socioeconomic power, and forced himself upon a black woman who completely obviously disregarding any of her rights, subjecting her to his will, and it's the worse thing that I've ever seen and I intend to put him in jail. I'm thinking the two of you are pretty happy that I've taken over this case from Mr. Gilchrist right now?

MCMICHAEL: I would probably lead my newscast with that. That would be the top of the newscast. Probably take direct quotes out of it and put it on. It would be -- the fact that they would speak on camera to us is pretty powerful.

STEPTOE: Is this news that a prosecutor thinks he's got the be all and end all case and that the guy is guilty?

FORD: But how about this? How about the fact that I'm willing, and, Dean, let me ask you this. Is there anything wrong with me as the prosecutor standing up to the press, a representative of the public, and saying here's what I think? Here is what I think about this case. I think it's one of the worse cases

I've seen in my tenure as a prosecutor. I think it's terrible for our community. It's done awful things to our reputation, and I intend to deal with it. I'm sending this man to jail. I'm sending a message. Anything wrong with that?

LEVI: Well, aside from the fact that it's immoral and unethical, it's --

FORD: Can't get hung up on these details.

LEVI: No. It violates all of the ethical rules. The prosecutor is not supposed to -- not permitted to opine, give an opinion, about the guilt or innocence of the Defendant. It's obvious that the prosecutor has presented the case to the grand jury, but you've taken it even a step further, because you're making comments that are designed to inflame the community. And what you're really trying to do is you're trying to reach out to the jury pool and pollute it, and you're trying to reach out to your witnesses and shore them up. You're trying to distort the process. You're also trying help yourself in the process.

FORD: But here's the interesting thing. As a member of the public... Ms. Reckhow, let me bring you into this. As a member of the public, do you want to know that your prosecutor truly and deeply and fervently believes in the cases that he's prosecuting, including this one? Is that important to you?

RECKHOW: No. I want to make sure that there's due process and

fairness. I mean, and stepping out before you have the trial is probably not appropriate.

FORD: But don't I have -- don't I have as an elected -- let's say I'm an elected official here in this county. As an elected official who is the chief law enforcement officer of this county, I'm responsible for the administration of law and justice, don't I have some sort of public relations function that I have to serve here? Isn't the public entitled to learn from me that I have confidence in this case? That this is not something that just kind of showed up on my desk and we're saying okay, yeah, maybe it's a good case, maybe it's not a good case. Doesn't the public have a right to know from me that this is what I feel about these cases? Mr. McMichael, what do you think?

MCMICHAEL: I think you can say certain things. I think there are legitimate things that prosecutors can put out to the public. I think what you've described is, I agree with Dean Levi, is completely out of line. If I were the defense counsel in that situation, I'd give you call right away.

FORD: But let me ask you this. I'll make you the defense counsel in this situation. You're now -- you've showed up for the arraignment with your client, gone in the courtroom, you've said my client is absolutely not guilty of this, and you walk out on the steps of the courthouse and our reporters are

there. All right. How many times do we see a defense lawyer standing next to the client saying I want the world to know my client is absolutely innocent and we are welcoming our day in court? Happens all the time, doesn't it?

MCMICHAEL: Sure.

FORD: So what's the difference between you saying this guy is absolutely innocent and me as the prosecutor saying no, he's not, he's absolutely guilty? Why is that a problem?

MCMICHAEL: Well, the prosecutor represents the government and the state. I don't. I represent an individual. I probably would be careful what I said depending on what the prosecutor said. I mean, I would measure my comments to what I was hearing from the prosecution side. In the circumstance you just described, if the prosecutor had taken the responsible role that Mr. Gilchrist would've taken and said nothing, I probably would've said nothing. I would've said client will be in court and we'll see what happens.

FORD: But the reality is there are a lot of other defense attorneys who will say something whether the prosecutor says something or not, right?

MCMICHAEL: There are.

FORD: And they'll get out there and they'll say this is a miscarriage of justice. We've heard that, right? My client is absolutely innocent, right? Framed, setup by the government,

all sorts of proclamations. So if they can say it why can't I as the prosecutor? Doesn't that -- isn't that just a matter of fairness, simple fairness?

MCMICHAEL: Well, I think there's a big difference between when someone in a position of authority is making a statement like a prosecutor or the Chancellor of a university or even a group of professors. They're in positions of authority. That's one thing. I'm a lowly defense lawyer. Nobody believes us anyway. So I think there is a difference.

FORD: Would you want to -- Ms. Steptoe, would you in this interview with the prosecutor, suppose it starts off just sort of general then I say, here is what's happened. It's been presented to a grand jury. This is what the indictment says and we're going to be scheduling a trial date. Would you want to know the prosecutor's personal opinion about this case as part of your reporting? Would you ask me? Would you say do you think you've got the right -- do you think this guy is really guilty? Do you think this really happened here?

STEPTOE: Yeah. I will ask him that and -- or he or she, and I -- because I want to get them on the record --

FORD: Right.

STEPTOE: As to what -- if they're going to offer it, yeah, I'm going to take it..

FORD: Do you care? Do you care? Let me ask you here, do you care if

I as the prosecutor start going beyond the bounds of what Dean Levi said is appropriate for me? Are you going to stop me and say, well, you know what, you probably shouldn't be telling me this? Because I heard Dean Levi last week talking about this and he said that you're not supposed to be doing this.

McMICHAEL: That's not my job. My job is to ask the questions. My job is not to censor what public officials want to talk to the media about. My job is to put the microphone in front of them and get them on the record and ask all the right questions.

FORD: So -- you agree obviously?

STEPTOE: Yeah, but there's right questions and there's right questions. It's not just do you think he's guilty or do you think he's innocent, and what does the indictment say. It's what evidence do you have, who did you interview, how do you know this, why are you confident.

FORD: But doesn't it make a better story if you have a prosecutor who says here's our facts and here is who our witnesses are and here is where we're going, and now let me tell you how I really feel about this. Let me tell you the anger that I feel about how this has besmirched my community and my neighborhood and my university. That's kind of a better interview, is it not?

STEPTOE: It's a good interview, but it's also -- it's so emotional and

it is so self-interested that it's going to carry minimal weight with me honestly.

FORD: But isn't that what you see when you talk to defense lawyers? That they are more often than not going to say to you I got a great guy. He's never been in trouble before. This is all nonsense. They're trying to set him up. He would never do this. We're innocent. That's basically what you're going to hear from the defense lawyer, right?

STEPTOE: Uh-huh (yes).

FORD: So just as a fundamental sense of balance and a sense of fairness, I guess, why can't the prosecutor say that? And get the same coverage when the prosecutor does.

STEPTOE: I think that the coverage has got to be give them their say, both sides, but go out and try to figure it out for yourself as well. Balance the reality against the posturing and the self-interested statements.

FORD: How does this -- Dean Levi, what would you say to members of the public, because I'm sure the public is going to say I'm not that concerned with your cannons of ethics and your sense of what the boundaries are. I want to hear this. I want to hear the stories. I want to hear what the defense lawyer has to say. I want to hear what the prosecutor has to say. And I don't want to just hear this well, the indictment charges. I want to know what they really think about that. How do we

explain to the public that somehow that's not such a good thing when they, I'm sure, welcome it?

LEVI: Well, there are two different parts of the prosecutor's statements. The one part is do you think you have the right person. It's self-evident that you wouldn't go forward with an indictment if you thought you had the wrong person. That would be a waste of time and it wouldn't serve any function at all, not even your own self-interested functions. So it's the gloss that you're putting on it, the emotional gloss. How do you explain to the community that a prosecutor shouldn't be emotional and shouldn't attempt to inflame the community? I think we can do that, but that's part of the role that the Bar plays in a community, which is to explain why it's important not to try these cases in the media or in the public domain prior to the trial. After the trial, after there's a conviction, the prosecutor is free to make statements about how the process has been vindicated and what a terrible crime this was. A lot of it has to do with timing.

FORD: I think I'm going to let you be the last word on it. As we said when we got started, we were sort of a heroic effort in an hour and a half to at least touch on as many of these issues that we can and to make it clear to you how difficult they are. As we said when we began, we're not going to resolve things. We hope to help you think about all of them.

And I think that all of our panelists have done that, and we should thank them with a round of applause.