

The DIY of DNA

Bradley Bannon¹

Patterson Harkavy LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517

On December 13, 2024, I got a text message from my mother, followed by more throughout the day from other friends and family, asking me if I'd heard the news that Crystal Mangum had recanted her allegations of sexual assault.

Almost 20 years earlier, those allegations had briefly captivated not just my region and state, but the entire country. At the time, Mangum, a young Black woman, was a full-time student at North Carolina Central University in Durham. She was also a part-time exotic dancer. On March 13, 2006, she performed at a house party hosted by captains of the Duke University men's lacrosse team for the rest of the team, all but one of whom were white.

Shortly after leaving the house that night, Mangum alleged that she had been beaten and sexually assaulted – orally, vaginally, and anally – by three members of the team, none of whom wore condoms, and at least one if not all of whom had ejaculated. She claimed that the assault occurred in the bathroom at the house and that she lost several false fingernails during a struggle with one of her attackers.

As a result, Mangum was taken to a local hospital where a sexual assault nurse examiner collected evidence – including oral, vaginal, and rectal swabs – for what is commonly known as

¹ Brad Bannon has represented people accused and convicted of crimes for nearly 30 years. In 2016, after 20 years of practice at the prestigious Raleigh criminal defense firm of Cheshire Parker Schneider, he joined the equally reputable civil rights law firm of Patterson Harkavy LLP in Chapel Hill, expanding his practice to civil rights litigation based on police misconduct and wrongful convictions. The criminal case he most recently litigated, in January 2025, was a post-conviction hearing in a murder case that lasted three weeks and involved a claim of newly discovered DNA evidence of innocence.

a “rape kit.” Durham Police Department officers also collected additional evidence from the house where the party occurred – including some false fingernails from a trash can in the bathroom where Mangum said she had lost some false fingernails during the struggle.

At the time of the party and alleged sexual assault, Durham County District Attorney Mike Nifong was involved in a hotly contested primary election campaign. He immediately seized on Mangum’s allegations as a campaign issue, portraying them as the truth and framing them around race and class, town and gown, Black and white. In dozens of public comments to local and national media, he ignored the presumption of innocence and promoted a narrative of the sexual assault rooted in the worst aspects of our region’s and nation’s history: the racist exploitation and abuse of a struggling Black woman by white-privileged men. At campaign events, Nifong vowed not to let “Durham’s view in the eyes of the world be a bunch of lacrosse players from Duke raping a Black girl from Durham.” He promised to pursue criminal charges against three of the players. He kept that promise, and he won the primary.

One of the three lacrosse players he charged was one of the team’s captains, who hosted and lived at the house where the party occurred. As second chair to my mentor and senior partner at the time, Joseph B. Cheshire V, I ended up representing that young man. While the case continued to take on a life of its own in the local and national media, and in turn continued to be litigated in the court of public opinion, I started to work on how it would be litigated in the court of actual law.

It was clear to me from the start that litigation of the case would involve the presentation of DNA evidence. In some of his earlier public comments, Nifong emphasized the existence of DNA evidence in the case and forecast that the State Crime Lab’s analysis of that evidence would identify the perpetrators. But when the State Crime Lab’s analysis failed to reveal the

presence of DNA belonging to any of the people Mangum had identified as the perpetrators, Nifong downplayed the significance of the DNA evidence, promising to forge ahead and prosecute the case “the old-fashioned way.”

However, at the same time, Nifong and the Durham Police Department arranged for the DNA evidence to be transferred from the State Crime Lab to a private DNA lab in Greensboro called DNA Security for additional analysis. Nifong and the police also conferred multiple times with the lab director, Dr. Brian Meehan, while he was conducting that additional analysis.

Following those meetings and conferences, Dr. Meehan produced a report of the results of his work: (1) analysis of the rape kit items revealed the presence of a single male source of DNA on the vaginal swab: Mangum’s boyfriend at the time; (2) analysis of the false fingernails seized from the bathroom trash can revealed the presence of a mixture of DNA from which my client could not be excluded, even though more than 98% of the randomly selected population could be; and (3) analysis of another false fingernail found elsewhere in the house revealed the presence of a single source of DNA: an unindicted member of the team.

While I was not terribly worried about my client’s DNA being on an item collected from his bathroom trash can, I was immediately confused by something: how could the State Crime Lab conclude there was not enough DNA in the mixture on the false fingernails collected from the bathroom trash can to reach *any* conclusion about its source, while the private lab could conclude, apparently with 98% certainty, that my client was the source?

I didn’t think that was how DNA analysis worked. But I also recognized I knew nothing about how DNA analysis worked – at least nothing I hadn’t seen on a television show – because DNA evidence had never been of any consequence in any of my cases. The closest I’d come to it

was in other sexual assault cases where the issue was not whether sexual contact occurred, but whether it was consensual. In those cases, the DNA evidence didn't really matter.

But in this case, I knew it would. Nifong had held off indicting my client as the third and final player charged until he got that DNA report from the private lab. Notwithstanding the benevolent explanation of how my client's DNA could exist on an item seized from his own bathroom trash can, the timing of the indictment in relation to the report made it clear to me that this particular DNA evidence would play an outsized role in the theory of prosecution.

That realization, along with my initial confusion about how the State Crime Lab and private lab could have reached such different results when applying the same forensic analysis, meant that I no longer had the luxury of consuming DNA evidence only as a plot point in a television show. I needed to understand how it really worked, so that I could deal with it in the courtroom.

I had no idea how quickly that moment in the courtroom would come, though.

During six weeks at the end of 2006, I went from knowing nothing at all about DNA science or analysis to conducting, without notice, a probing examination of an obfuscating DNA expert that revealed his collaboration with the District Attorney to bury exculpatory DNA evidence in the Duke Lacrosse Case.

The aftermath of that examination was remarkable. It included the recusal, disbarment, conviction, and incarceration of the District Attorney for criminal contempt, as well as the termination of the DNA expert by the very lab he founded and directed.

More importantly, the aftermath included the dismissal of the charges and exoneration of the accused by the North Carolina Attorney General's Office – based on the DNA evidence and

other exculpatory evidence which proved not only that they did not commit the crime, but that the crime *did not happen at all*.

Most importantly for all my clients who've followed, the aftermath included my realization that DNA analysis – particularly analysis of mixtures collected from crime scenes – is neither impregnable nor foolproof. It is based on science and protocols that are developed and applied by human beings, making every step of that process knowable and susceptible to the limitations of human beings. Those limitations, in turn, can mean the difference between whether someone is accused or not, convicted or not, or released or not. It is therefore incumbent on lawyers for the accused and the convicted to know what those limitations are, and how they may have impacted the consequential DNA analysis in any given case.

The same is true, really, for any field of forensic analysis.

And the same is possible, really, for any lawyer.

There were and still are many lessons to be learned from the Duke Lacrosse Case, but I believe those lessons about how we approach the use of forensic evidence in our cases, particularly DNA evidence, are the most important and enduring ones. And I hope my presentation and the supporting materials help to keep those lessons alive.

Bradley Bannon
February 5, 2025