



# Zalkind Duncan & Bernstein LLP

ATTORNEYS AT LAW

Norman S. Zalkind  
David Duncan  
also member of PA Bar  
Inga S. Bernstein  
Rachel Stroup

Ruth O'Meara-Costello  
Emma Quinn-Judge  
Monica R. Shah  
also member of NY Bar  
Naomi R. Shatz  
also member of NY Bar  
David A. Russcol  
also member of NY & DC Bars  
Courtney Hostetler

OF COUNSEL:  
Elizabeth A. Lunt  
Harvey A. Silverglate

## NEWS RELEASE

To: The news media

From: Zalkind, Duncan & Bernstein, LLP, legal counsel for Brandon J. Winston

Norman S. Zalkind, lead trial counsel for Winston

Courtney Hostetler, member of the trial team

Harvey A. Silverglate, member of the trial team

Date: November 11, 2015

Re: False portrayals of Brandon Winston/Kamilah Willingham case in the documentary film "The Hunting Ground" and in CNN programming

On Thursday, November 19<sup>th</sup>, CNN will present the TV premiere of "The Hunting Ground," a film billed as a "startling expose," but which is actually a dangerous and disingenuous piece of propaganda.

This supposed documentary is rife with inaccuracies and is false in its portrayal of our client, Harvard Law student Brandon Winston, and his alleged victim, Kamilah Willingham. In airing this film, the network will treat its depiction of Mr. Winston's case as a truthful rendering of a school disciplinary process and criminal trial involving the hot-button issue of campus sexual assault. It is not. Film writer and director Kirby Dick and producer Amy Ziering have presented a contrary and duplicitous representation of the facts via Ms. Willingham's version of events. It is not only that the filmmakers and CNN have refused to present the viewpoints of other relevant participants in this process; it's that they also refused to present important information that contradicts the conclusion that the filmmakers would like the audience to draw.

Three separate and independent bodies considered evidence and the facts of Mr. Winston's case: the full Harvard Law faculty, a Middlesex County (MA) grand jury, and finally a 12-member criminal trial jury. The Harvard Law School faculty reviewed the case fully and

carefully, and ultimately dismissed the charges against Mr. Winston because there was not sufficient evidence to support those charges. After hearing the prosecutor's case for indictment, which included listening to Ms. Willingham's extensive testimony, the grand jury refused to indict Mr. Winston on any charge relating to Ms. Willingham. Mr. Winston was indicted only on two counts of "indecent assault and battery" against Ms. Willingham's friend (which is a non-penetrative charge—in other words, he was not charged with rape). At trial, the jurors heard testimony from Ms. Willingham, her friend, and Mr. Winston. They reviewed transcripts and reports from the Harvard disciplinary process, and they reviewed physical evidence. In the end, they found Mr. Winston to be not guilty of either indecent assault charge. He was found guilty only of one incidental misdemeanor (not a sexual assault)—and even then, only after the jury deadlocked for three days, with 11 of 12 jurors voting for full acquittal and only a single juror refusing to completely acquit our client.

While earlier versions of the film failed to comment on the outcome of Mr. Winston's trial, even *after* the trial had ended, CNN's press package for the film concludes its discussion of the case with a single sentence: "In March 2015, a jury convicted Winston for non-sexual assault." Neither the film nor the press package informs the viewer about the damning evidence that caused the jury to reject Ms. Willingham's claim that Mr. Winston raped her friend, and that caused the grand jury to refuse to indict Mr. Winston on any charges relating to Ms. Willingham herself.

Mr. Winston spent more than four years in limbo, having to defend himself repeatedly against Ms. Willingham's accusations, unable to complete his education or begin his career, while Ms. Willingham graduated, obtained a job, and capitalized on her accusations to become a celebrity. He has been vindicated by three fact-finding bodies. After his criminal trial, Harvard Law School—which had re-suspended him for the duration of the criminal proceedings—readmitted him so that he could again work toward his law degree. The filmmakers and CNN would have its audience believe that his repeated exoneration is not proof of Mr. Winston's innocence, but rather proof that all of these systems are corrupted in favor of the accused. But the only way that the filmmakers can lead the audience to this conclusion is by omitting critical evidence and information from the case, including:

- DNA evidence helped exonerate Mr. Winston. Ms. Willingham produced a condom the morning following the night in question, which she led the authorities to believe was used by Mr. Winston during his alleged rape of her friend. The police had the condom tested for DNA. The test revealed that the DNA on the condom matched Ms. Willingham—not her friend—and an unknown male. But the prosecution never asked for a DNA sample from Mr. Winston in order to determine whether his DNA was on the condom. It was only later, at the request of Mr. Winston's lawyers, that the condom was tested against Mr. Winston's DNA. Both the prosecutor and the defense team agreed with the results of the test: that the female DNA on the condom matched Ms. Willingham; and that the male DNA did not belong to Mr. Winston. Presumably

it belonged to a guest of Ms. Willingham about whom she did not testify. Despite the fact that Ms. Willingham must have known that she used the condom with another man, she still presented it as evidence against Mr. Winston in the Harvard Law School proceedings and before the grand jury.

- Ms. Willingham has claimed that Mr. Winston drugged her; but in fact the only drugs involved in the evening in question was the cocaine that she possessed, used, and gave to her friends.
- Grand juries in Massachusetts (indeed, nationwide) rarely decline to vote for indictment; that is, choose not to indict on charges brought before them by a district attorney, especially in sex crimes cases. The process heavily favors the prosecution: only prosecution witnesses are allowed to testify – which in this case included Ms. Willingham – and there is a very low standard of proof. To indict a defendant, the grand jury only has to find that the defendant *probably* committed the offense. But despite this tendency to indict, the grand jury heard the prosecution’s case and Ms. Willingham’s testimony, and refused to indict him on any charge relating to Ms. Willingham, and only on two sexual assault charges relating to her friend—on both of which he was later acquitted.

Ultimately, extensive witness testimony made under oath, combined with forensic evidence, led the trial jury to the carefully considered and correct conclusion that Mr. Winston did not commit sexual assault. Yet the filmmakers and the network have chosen not to address this evidence or the conclusions drawn by the decision-making bodies active in the case in the film or in CNN’s publicity surrounding the film, because the evidence and findings do not fit the false, damaging narrative that they have crafted about our client.

The topic of campus sexual assault is an important one, and should be approached with an eye toward the truth. This is even more important where the discussion turns to individual cases, where people’s lives and reputations are on the line.

CNN has allowed Ms. Willingham to label Mr. Winston as “predator” without any evidence to support this claim. It is disturbing to us that the filmmakers and CNN see Mr. Winston, a young black man accused of sexual assault, and refuse to believe he is anything but guilty—despite the fact that the Harvard Law School faculty voted to dismiss the charges against him; despite the fact a grand jury determined that there was not enough evidence to indict him on a number of charges and the trial jury acquitted him on the remaining sexual assault charges; despite testimonial and forensic evidence of his innocence; and despite the fact that he has never before nor since been accused of any criminal offense. And it is even more disturbing that they are willing to leave out of the film verifiable facts that undermine the filmmakers’ biased

conclusions, and to refuse to include any viewpoints that do not support their own. That's not journalism. That's propaganda.

“The Hunting Ground” demonstrates a fatal failure to abide by basic rules of journalism. Our legal team is prepared to have one of its members debate the filmmakers, the self-proclaimed victim Ms. Willingham, or anyone else, at any time and any place. However, we do not expect our challenge to be taken up. Thus far, CNN has refused to allow a member of Mr. Winston's trial team to appear on a panel discussing the film when it is premiered. It appears that the network is less concerned with presenting an objective journalistic piece on an important issue, and more concerned with drumming up support for this shamefully unfair and inaccurate film.

For more information contact:

Norman Zalkind  
Zalkind Duncan & Bernstein LLP  
65a Atlantic Ave., Boston MA 02110  
617-742-6020  
nzalkind@zalkindlaw.com