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EXHIBIT No. 5**Herald-Sun, The (Durham, NC)**

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**Defense asks for dancer's history****Mental health, drug issues are credibility risks, lawyer says***JOHN STEVENSON AND PAUL BONNER* [jstevenson@heraldsun.com](mailto:jstevenson@heraldsun.com); 419-6643

An exotic dancer who says three **Duke** University lacrosse players raped her apparently has more than one version of her story, has suffered from mental and emotional problems, and may have been committed at least once to a hospital or drug treatment program, a defense lawyer said in court motions documents filed Monday. Lawyer Kirk Osborn, representing **Duke** sophomore Reade Seligmann, one of two lacrosse players indicted on rape charges last week, wrote that he must be allowed to inspect **the** dancer's mental health records and drug treatment history as part of an attempt to discredit her allegations.

Then, a pretrial hearing should be scheduled to determine if **the** woman "is even credible enough to provide reliable testimony," Osborn added.

He said material given to him by District Attorney Mike Nifong was inconsistent, and that **the** dancer's story was "disputed by other irrefutable facts and witnesses with knowledge of **the** complaining witness and those accused by her."

Osborn did not elaborate.

When asked to comment about **the** motions Monday night, **the** accuser's mother told a reporter through her closed front door, "I ain't talking to no one tonight."

Meanwhile, **Duke** officials said a Newsweek magazine cover story this week continues **the** national spotlight that already was shining with national television coverage. **The** first of five campus study commissions is due to report next week on lacrosse players' conduct before **the** March 13 party, but officials said **the** publicity isn't taking a toll on **the** university's outlook or its core mission.

Osborn's motions constitute **the** first official post-indictment paperwork in a case that has polarized **the** community for more than a month, since **the** dancer claimed she was raped and sodomized by three men for 30 minutes at a lacrosse party inside 610 N. Buchanan Blvd. on **the** night of March 13-14.

**The** woman reportedly picked Seligmann, 20, of Essex Fells, N.J., and Collin Finnerty, 19, of Garden City, N.Y., out of a photo lineup and claimed **they** were among her alleged attackers.

But Osborn and other defense attorneys have branded **the** identifications as unreliable, citing photographs and witness accounts indicating **the** dancer was too intoxicated even to stand up.

One attorney source, asking not to be identified, also said Monday that police showed **the** woman only pictures of **Duke** lacrosse players and no one else. If so, **the** photo lineup was "impermissibly suggestive" and will be **the** subject of a court attack soon, **the** lawyer said.

A scientific analysis conducted by **the** State Bureau of Investigation showed there was no DNA from 46

lacrosse players tested in or on **the** dancer's body, on her clothing and belongings or under her fingernails -- even though she said she clawed at her attackers to fend them off.

Additional DNA results from a private laboratory have not come back. Nifong told **The** Herald-Sun on Saturday that **the** results may not be returned until May 15.

Defense lawyers also contend Seligmann has an alibi in **the** form of cell phone, taxicab and bank records.

**They** claim he talked for several minutes on his phone beginning at 12:07 a.m. March 14, that he was picked up by a cab at 12:19 a.m. and that he was at a Wachovia ATM at 12:24 a.m., where a bank security camera filmed his transaction.

That was during **the** only plausible time frame that a rape might have occurred, according to **the** defense team. Police and prosecutors have not publicly pinpointed a time **the** alleged rape occurred.

Despite **the** apparent accumulation of evidence favorable to **the** defense, Nifong said last week he still hoped to identify and charge a third alleged rapist in **the** case.

In addition to a motion seeking **the** accuser's mental health and drug treatment records, Osborn filed a motion Monday to obtain information that might "impeach" other prosecution witnesses.

He wrote, for example, that he is entitled to records "revealing prior misconduct or bad acts attributed to any witness **the** prosecution intends to call."

Among other **things**, Osborn also asked for information about financial inducements or promises of leniency made to witnesses, along with details of any threats that may have been made. If a witness previously gave officers any statements "which ultimately proved to be untrue or even arguably untrue," Osborn also should be told about that, he said.

**The** defense attorney said he had a right to know anything that might show "defect or deficiency of character for untruthfulness" or "prejudice, bias, motive, interest and/or corruption" on **the** part of witnesses.

For example, a threat to revoke **the** citizenship of a witness or deport him might unfairly induce him to provide false information to authorities, Osborn wrote.

Also Monday, **the** Durham Convention & Visitors Bureau released **the** results of a poll conducted last week that indicated little impact on Durham's image from **the** lacrosse case, despite a month of massive national attention.

**The** poll, conducted by Opinion Research Corp., found that:

\*When asked if **they** had seen, read or heard any news about Durham in **the** past two weeks, 28 percent responded yes, 63 percent no and 8 percent didn't know.

**The** university is continuing on with business as usual as **the** case plays out in **the** legal system, an official said Monday.

"We're **doing the same things** we **always do**," Duke spokesman John Burness said. "One of **the** main **things**

is that **Duke** has earned its reputation over **the** years as a world-class institution because of our first-rate academics, as well as medical care and, yes, athletics."

Also, he said, "when there are controversies, we face it." One was **the** Palestinian Solidarity Movement's teach-in in October 2004, which, like **the** lacrosse case, presented a "teachable moment," Burness said.

"We'll take our lumps if **they** come," Burness said, and make improvements.

On Saturday and Sunday, **Duke** President Richard Brodhead spoke to as many as a dozen alumni groups that met for reunions. Their response was generally approving of **Duke's** response to **the** allegations, Burness said.

"Unfortunately, there's an assumption that by taking **the** measured steps we have, **the** players and team are guilty, but in neither case is that true."

But, Burness said, "when there are a lot of emotions out there, you can expect some criticism."

**Duke** has hired a consulting firm for advice on its public relations stance during **the** intense publicity, Burness confirmed. **Duke** has done so two or three times previously to help devise a "crisis communications plan," he said.

One was when **Duke** Hospital acknowledged that because of a contractor's mixup of containers, it had mistakenly washed surgical instruments using hydraulic fluid drained from an elevator system instead of detergent.

"**They** give us a sense of whether we're asking **the** right questions" and helping devise strategies, Burness said. In **the** lacrosse case, **the** consultant's feedback has been "highly reinforcing of our approach," which he said has been characterized by cooperation with news media.

**Duke** public affairs staff also have contacted their counterparts at other universities for advice, he said, as well as **Duke's** own alumni.

**The** case doesn't seem to have affected **the** number of prospective new students committing to **Duke**, he said. A final headcount is expected **the** first of next month.

Closer to home, **the** fallout crops up in other ways.

**Duke** officials admitted that **they** held onto a report touting **the** university's economic impact on Durham, lest releasing it at **the** height of **the** fresh revelations be seen as trying to divert attention from **the** allegations. Instead, **the** fourth annual such study that estimated **Duke's** economic input at \$3.2 billion for fiscal 2004-2005 was released as part of a presentation that also involved N.C. Central University and Durham Technical Community College, at a Greater Durham Chamber of Commerce annual meeting last week.

Also, when a **Duke** undergraduate and a graduate student were arrested on charges of vandalizing a lamppost in Trinity Park last week, officials were quick to deplore **the** act.

A message from Larry Moneta, **Duke's** vice president for student affairs, appeared on a neighborhood e-mail bulletin board discussing **the** incident, promising serious action.

"I have so many reactions, I don't know where to begin: anger, sadness and embarrassment among them. ... I am

truly sorry that this persists," Moneta wrote.

Moneta said Monday that his office hasn't changed how it responds to student misbehavior.

"You know **Duke** has not waited for something like this to happen for it to become **the** spark for intervention," he said.

But Moneta acknowledged that since **the** lacrosse team scandal broke, his office is more sensitive to such reports, and on Sunday, he met with **the** lamppost's owner.

"We had a good visit," he said.

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