

The DA, Duke Lacrosse and Higher-Ed Hypocrisy

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Duke is back in the news. As befits a great university, its travails have implications for higher education in America and for public life throughout the country.

Two months ago, a freshman women's studies major who uses the stage name "Belle Knox," proudly affirmed that she is putting herself through Duke by acting in adult films. In what might seem like an unrelated matter, last week Vanity Fair columnist and New York Times best-selling author William D. Cohan published "The Price of Silence: The Duke Lacrosse Scandal, the Power of the Elite, and the Corruption of Our Great Universities."

But the generally insouciant reaction at Duke to the freshman porn star and the shameful rush to judgment eight years ago against three lacrosse players falsely accused of rape have a common root. Both grow out of the tangle of ideas about limitless individual freedom and the pervasiveness of moral and political oppression in America that our elite universities assiduously teach.

Cohan's 600-page tome confirms that the lacrosse players were the targets of a rush to judgment following a raucous, alcohol-fueled team party in March 2006 hosted by three co-captains in their off-campus house during spring break. His new twist is to suggest a second rush to judgment against the disgraced prosecuting attorney and the alleged victim (who, unrelated to the Duke case, is currently serving an 18-year prison term for murder).

In April 2006, as he entered the final weeks of a closely contested primary election, Durham, N.C., District Attorney Mike Nifong indicted lacrosse players Collin Finnerty and Reade Seligman, and in May he added teammate David Evans to the list of defendants. All were accused of gang-raping erotic dancer Crystal Gail Mangum who, along with another black woman, had been hired by two of the co-captains to perform for the team. With his chance of victory in the primary resting on securing a disproportionate share of the black vote, Nifong pressed ahead, even though DNA tests of the Duke Hospital rape kit and materials provided by police investigators had turned up no link to any of the lacrosse players, which undermined Mangum's many and conflicting accounts.

The case roiled Duke, shook the city of Durham, and attracted national media attention. The story line -- rich, white, male athletes at an elite Southern school brutalize a black single mother from the other side of town who'd been forced to work as a stripper and escort to support herself and her children -- confirmed prejudices typical of the media and professoriate. New York Times sports columnist Selena Roberts, and a contingent of Duke

professors called the Group of 88, who placed an ad in Duke's student newspaper, led the pack in adopting a venomous tone toward the lacrosse players and exuding contempt for their rights of due process..

Duke University President Richard Brodhead was vacillating and weak. Although in some public remarks he gave lip service to the presumption of innocence that is a hallmark of justice in a free society, his drastic actions spoke louder than his measured words. Within weeks of the allegation, Brodhead peremptorily canceled the lacrosse season -- the team had hopes of winning the national championship -- and demanded coach Mike Pressler's resignation, creating the impression that the entire team must have been guilty of something awful.

The turning point came in a December 2006 hearing. Defense attorneys demonstrated that Nifong failed to fully disclose results of a second round of DNA testing. Nifong did divulge that no lacrosse player DNA had been found on Mangum. But despite his legal obligation to provide the full findings, he failed to inform defense attorneys that, in addition, DNA from sexual activity with four other men was found on Mangum.

As pressure from the state bar increased, Nifong was compelled in January 2007 to recuse himself from the case. North Carolina Attorney General Roy Cooper took over the investigation. In April 2007, Cooper not only dropped all charges because of "insufficient evidence" but took the extraordinary step of proclaiming the three accused players innocent. In July 2007, Nifong was disbarred; in August 2007, he was held in criminal contempt of court for lying to the judge.

Cohan's narrative is gripping, but it breaks little new factual ground. Mostly, he lets characters and commentators speak for themselves, rarely explicitly interjecting his opinion or offering original analysis. However, his book strongly intimates that the until-now-untold second rush to judgment was directed against Nifong (a convicted liar) and Mangum (now a convicted killer) who, Cohan reports, had a history of bipolar disorder.

In particular, Cohan gives Nifong free rein in page after page to justify his indefensible conduct. Cohan is occasionally snarky toward the falsely accused athletes, but oddly respectful of the disgraced prosecutor. He never challenges Nifong, though there is much to contest. The definitive account of this case has been "Until Proven Innocent," the rigorous and courageous book by Stuart Taylor Jr. and Brooklyn College and CUNY Graduate Center Professor KC Johnson. That remains true, emphatically so, after the publication of "The Price of Silence." Thankfully for the historical record, Johnson is still setting the record straight: In his indispensable blog, [Durham-in-Wonderland](#), he details the numerous untrue statements and fanciful conjectures Nifong makes in his conversations with Cohan.

Most egregiously, Cohan leaves unchallenged Nifong's sinister insistence that although evidence was lacking of the crimes for which the three players were charged, "something happened" of a criminal nature in the bathroom of the lacrosse house on the evening of March 13, 2006. Cohan thereby lends the vague and entirely unsubstantiated accusation credence.

Actually, nothing in Cohan's book provides any reason to doubt that Nifong engaged in gross misconduct and fully deserved his removal from the case, the loss of his license to practice law, and a contempt conviction. His misconduct went well beyond illegally withholding exculpatory DNA evidence.

For example, as Cohan himself recounts, in the weeks following the March party, and in violation of North Carolina state law, Nifong made repeated inflammatory pre-trial public statements: He characterized the lacrosse players as "hooligans"; he falsely claimed that they were not cooperating; and he declared that he was obliged to bring charges and pursue prosecution if for no other reason than the community was up in arms about the case -- notwithstanding that he had done so much to inflame the situation.

The deeper problem with Cohan's book is the fundamental misunderstanding it betrays of what went wrong at Duke, and why. A vehement and vocal minority of faculty seized upon grave, if flimsy, accusations to vilify lacrosse players as a whole and portray them as the embodiments of racism, sexism, and class privilege. The vast majority of faculty -- law professor James Coleman was an honorable exception -- remained silent. The administration concentrated on protecting Duke's brand. Consequently, at Duke fundamental principles of freedom -- the dignity of all individuals, including lacrosse players; equality before the law; due process, especially the presumption of innocence -- lacked a constituency.

In this respect, Duke is no different from its peers. Instead of teaching the principles that underlie liberal education, elite universities have for many years been force-feeding students a steady diet of the fashionable convention wisdom. Disdainful of dissent, it declares the right of untrammelled individual freedom while proclaiming that women and minorities are pervasively subjugated based on race, class, and sex.

Such a climate of opinion accounts for a campus culture that blithely accepts and even celebrates a freshman woman starring in hard-core pornography but that demonizes athletes who drank too much at a spring break party, paid women to dance naked and, when Mangum's partner hurled a racist taunt, replied in kind.

Soon after the party, the lacrosse team co-captains publicly apologized, expressing "sincere regret over the lapse in judgment." The entire team cooperated fully with the police. The indicted players fought tenaciously within the legal system for their good names, for their

families, and for their teammates. Even in Cohan's unfriendly account -- and in sharp contrast to their accusers and condemners -- the lacrosse players and their dismissed coach comported themselves throughout the ordeal with honor and dignity.

Several commentators quoted by Cohan liken the Duke lacrosse scandal to "I Am Charlotte Simmons," Tom Wolfe's 2004 novel about the adventures of a brilliant young woman from Sparta, N.C., who wins a scholarship to a university that very much resembles Duke. But Wolfe's view of university culture differs sharply from Cohan's.

Cohan suggests that Duke has been corrupted by the vulgarity that pampered athletes, particularly lacrosse players, bring to campus. While college athletes can behave disgracefully, and universities have been known to behave disgracefully by covering up their athletes' criminal behavior, this is far from Wolfe's theme.

Cohan completely misses what Wolfe dramatizes profoundly in "I Am Charlotte Simmons." In the great novelist's telling, college professors' cherished dogmas about the limitlessness of human freedom and the wickedness of the American way of life combine to corrupt the morals of students and foster a public culture of self-righteous, hypocritical, and vicious demagoguery.

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