

“Presumed Guilty: Due Process Lessons of the Duke Lacrosse Case”

Video Transcript

Text on screen: In 2006, three members of the Duke lacrosse team were charged with first-degree rape of a stripper who performed at a party they attended.

Prof. Johnson: What was remarkable is that lots of figures within the media, within the Duke faculty, and, to a certain extent, within the Duke administration, not only presumed the players to be guilty, but then drew these very broad moral judgments.

Text on screen: In 2007, the North Carolina Attorney General declared the players

awakened by the police, she was going to be admitted to a

jail for one day. He issued a barrage of inflammatory public statements which violated ethical rules for prosecutors. So Nifong's behavior was extraordinarily bad.

It was, I think, unprecedented the sort of behavior that we saw from the Duke faculty. I can't think of another instance in modern higher education in which faculty members essentially chose to exploit their students' distress to advance a campus pedagogical agenda, to push their own ideological vision, and to abandon any pretense of supporting fairness, due process, the dispassionate evaluation of evidence.

So there were multiple villains in this case. The worst of them was Nifong, in terms of the degree of the misconduct. But if you want to look at unprecedented conduct, I think the focus would be on the Duke faculty.

The Times coverage, which was both relentless and one-sided -- there were more than a hundred articles or opinion columns in the *Times* about the lacrosse case -- set the stage for the national media that, "Look, these guys must be guilty because it's *The New York Times* which is saying it. And if the *Times* is saying it, it must be true."

Nancy Grace (Video): I don't think they want a lie detector test because they're afraid they won't pass a lie detector test.

Wendy Murphy, Former Prosecutor (Video):

And I may be the last person willing to take the heat because the victim is certainly taking a beating, as is Mike Nifong. And it's really unconscionably unfair.

Prof. Johnson:

This was a case that served differing agendas of differing groups. For Nifong, he wanted guilt because it would help his cause in the primary. For the Duke faculty members, portraying their own students as racist advanced an on-campus agenda of making more hires dealing with topics of race, class, and gender and requiring more courses in race, class, and gender.

And for *The New York Times*, this was a case that fit very much the basic assumptions of a typical *Times* journalist, that white male athletes were out of control in both sexual and racial connotations -- and that advancing this would sort of advance a broader ideological agenda of the *Times*.

And so this was a -- it was almost a perfect storm of a case in which a variety of different groups could exploit the case for their own purposes.

Text on screen: In 2011, the US Department of Education ordered universities that received federal funds to lower due process protections for students accused of sexual assault.

Prof. Johnson: A double jeopardy system had to be introduced so that if a verdict was not guilty, the accuser needed to have the right to appeal. And it strongly discouraged colleges from allowing the accused student to cross-examine his accuser within the disciplinary tribunal itself. Those procedures remain in place, and there is no indication that the federal government will be backing away from them anytime soon.

And one of the things that we saw in the Duke lacrosse case is that campuses today, for a variety of reasons, are already virtually uniquely hostile to students who are accused of sexual assault. And then we have the federal government coming in saying that even the minimal due process protections that often were afforded to students on campus had to be eliminated, had to be lowered. And the purpose seemed to be to make conviction of sexual assault in these campus tribunals far more likely.

Lacrosse player (video):

For everyone who chose to speak out against us for before any of the facts were known, I truly hope that you are never put in a position where you have to experience the same pain and heartache that you caused our families, for your hurtful words and outrageous lies will forever be linked to this tragedy. Everyone will always remember that we told the truth. And in the words of Abraham Lincoln, "Truth is the best indication against slander."