

“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 innocent, saying they were victims of a “tragic rush to accuse.”

Prof. Johnson: It was a completely closed-minded, early approach to the case.

My name’s KC Johnson. I’m a professor of history at Brooklyn College and the CUNY Graduate Center. I wrote a blog on the Duke lacrosse case called “Durham in Wonderland” and cowrote a book on the case with Stuart Taylor called, “Until Proven Innocent.”

During spring break, when most of the students at Duke were off campus, the captains of the lacrosse team came up with the not-so-bright idea of inviting two strippers to perform for the players. One of them was this woman Crystal Mangum, who we subsequently learned had very severe mental problems.

She arrived; she had no particular interest in performing; it appears as if she was on some sort of combination of alcohol and prescription drugs; and the party relatively quickly turned ugly. There was a shouting match between the other dancer and members of the team. By this point, most of the guys had already left. And then the second dancer, a woman named Kim Roberts, drove off. And in a normal circumstance, no one ever would have heard of this again.

But as Roberts drove off, she found out that her fellow dancer had passed out. She called the police to come and get Mangum to take her either home or to a psychological institution. Mangum, when she was

awakened by the police, she was going to be admitted to a psychological institution and was prompted, improperly, by a nurse who asked her whether she had been raped. And Mangum, who knew the system well, said yes. She was sent to Duke Hospital, and she made an allegation.

We saw a kind of mob mentality that took hold of the activist wing of the Duke faculty, which culminated in an April 2006, statement signed by 88 Duke faculty members called the Group of 88, in which, before any charges even had been filed, these 88 faculty members took out an ad -- a full page ad -- in the Duke campus newspaper.

They unequivocally asserted that something had happened to Crystal Mangum. She was claiming rape. The lacrosse players said nothing happened. They said that they would continue their activism, regardless of what the court decided or what the police said. And they thanked public protestors for not waiting and making themselves heard. And the highest-profile public protest that had occurred at that point had been a march in front of the captain's house in which a protestor had carried large signs urging the castration of the lacrosse captains. So this was -- it was a complete abandonment of any pretense of objectivity, of any interest in the truth.

There were three elements that proved Mangum lied. The first, and by far the most important, was the DNA. Mangum's story was that she was sexually assaulted for 30 minutes by a group of people who did not use condoms. In such an assault, DNA would be left behind. And she was immediately taken to the hospital, DNA samples were taken from all 46 white lacrosse players, and there were no matches to any 46.

The second were the descriptions. Mangum did describe the people who attacked her. Those descriptions didn't resemble in any way any of the lacrosse players.

And the third were the inconsistencies within Mangum's story. Mangum looked at a number of different photo arrays. There was only one lacrosse player that she positively identified as being at the party in every single photo array that she looked at. The problem is that that was one lacrosse player who could prove that he was never in Durham. He actually wasn't in Durham County the night of the party.

And that information was shared with prosecutors. So the prosecutors knew before they went forward that they had a wholly unreliable witness whose descriptions didn't match her alleged

attackers and where there was no medical basis to advance -- to substantiate her charges.

Text on screen: The State of North Carolina conducted a separate investigation, and the findings were announced 13 months after the infamous party.

Ray Cooper, North Carolina Attorney General (video):

We believe that these cases were the result of a tragic rush to accuse and a failure to verify serious allegations. Based on the significant inconsistencies between the evidence and the various accounts given by the accusing witness, we believe these three individuals are innocent.

Prof. Johnson: The purpose of due process is to yield -- is the best way of yielding a truthful result. No one benefits, to begin with, from a false allegation of rape yielding a conviction because, when these issues get published, as was the case with the lacrosse case, it undermines a general presumption in the value of accusers.

And the other thing about valuing due process is that it's facially neutral. It's not as if a system of due process benefits either the accused or the accuser. The purpose is to create a fair system.

A lot of times what we're increasingly seeing on college campuses is that the process is designed with the presumption that the accuser must be telling the truth and that testing that presumption is somehow another sexual assault on the accuser. And this is entirely anathema to basic principles of due process, really, both in the criminal justice system and within higher education as a whole.

Mike Nifong, Durham County District Attorney (audio):

I am not going to allow Durham's view in the mind of the world to be a bunch of lacrosse players from Duke raping a black girl in Durham.

Prof. Johnson: Nifong, as prosecutor, seems to be functioning as if his goal in the case was to violate as many different ethical procedures as he possibly could in one case. So he ordered the police to run this rigged photo lineup that contained only photos of the lacrosse players. So anyone Mangum picked could be charged.

He conspired with the former head of a DNA lab to ensure that the lab head would not fully report his DNA results, results which were exonerating of the players. He lied in open court to a judge, for which he eventually was held in criminal contempt and was sent to county

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."