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On the Practice and Ethics of Trying Cases in the Media



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I thank you David, and I thank you everyone who is here.

This conference is not just about the Duke lacrosse case. It's about a kind of event that has taken on a central place in modern American culture: the legal case that creates a national community of attention, the case the public consumes every "fact" of with endless appetite for more. Cases like this typically combine elements of scandal, and celebrity, and other highly volatile social ingredients, race and sex perhaps chief among them. And having become one of America's principal forms of shared public life, these cases highlight crucial problems of our culture -- problems of achieving justice in a media-saturated society, problems of fundamental fairness to individuals, and problems in the way the American public is informed and misinformed about the world we live in together.

The Duke community lived through a classic example of such a case. When a case like this is over, it's tempting to think that the facts so clearly established at the end of the day must have been equally clear throughout the process. But this is not the case. When the accusations were made, our students said emphatically that they were innocent.



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On the other hand, the district attorney made a series of statements expressing absolute confidence that a crime had occurred and that the students were guilty of criminal charges. These starkly opposite versions of the truth created deep uncertainty about what in fact had happened.

Added to this, the local and national media began weeks of highly sensational coverage, creating an air of instant, uncritical certainty that fed on itself in remarkable ways, with each day providing new "revelations" -- please make sure I said that in quotes -- that became known around the world instantly, confirming and re-confirming public the assurance that an outrage had occurred.

Given the uncertainty at the heart of this case and given the tides of passionate prejudgment that the DA's comments and the media coverage touched off, I staked out a position on behalf of this university that rested on three principles. First, the type of crime that had been alleged had no place in our community. Second, the presumption of innocence is fundamental to our legal system, and our students were entitled to that presumption. And third, the whole matter had to be entrusted to the criminal justice system for its resolution.

As president, I had responsibility for the statements the university made and the actions the university took during this virtually unprecedented case, and I take responsibility for them now. But I did not come here to retell this story or to explain the logic of the university's acts. We're now in the aftermath of this extraordinary case, and the aftermath, we have to hope, is a time of learning. Having spent my entire life in the cause of teaching and learning, I am the last person who should be unwilling to learn lessons wherever they can be found. I am happy of this chance to share some of the lessons I have learned.

First and foremost, I regret our failure to reach out to the lacrosse players and their families in a time of extraordinary peril. Given the complexities of this case, getting the communication right would never have been easy. But the fact is that we did not get it right, causing the families to feel abandoned when they were most in need of support. This was a mistake. I take responsibility for it, and I apologize for it.

Second, some of those who were quick to speak as if the charges were true were on this campus, and some faculty made statements that I believe were ill-judged and divisive. They had the right to express their views. But the public as well as the accused students and their families could have thought that these were expressions of the university and its faculty as a whole. They were not, and we could have done more to underscore that fact.

Third, I understand that by deferring to the criminal justice system to the extent that we did and not repeating the need for the presumption of innocence equally vigorously at all key moments, we may have helped create the impression that the university did not care about its students. This was not true, and I regret it as well.



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Fourth, this episode has taught me a hard lesson about the criminal justice system and what it means to rely on it. Given the media circus and the public reactions that it touched off, I thought it essential to insist that this matter be resolved within the legal system, and not in the court of public opinion. As far as it went, I still believe that was completely right. But what this case reminds us is that our justice system, perhaps the best in the world, is only as good as the men and women who administer it. In this case, it was an officer of this system itself who presented false accusations as true, who suppressed contrary evidence, and who subverted the process he was sworn to uphold.

Relying on the criminal justice system in this case therefore proved to have serious limits. But for the university to strive to set the system to rights -- for instance, by attacking the District Attorney -- presented problems as well. For one thing, none of us can lightly speak as if the system itself is tainted because some of our own have been accused of crimes. I was also concerned that if Duke spoke out in an overly aggressive fashion, it would be perceived that a well-connected institution was improperly attempting to influence the judicial process, which could have caused the case to miscarry in a great variety of ways. Finally, there was in fact no legal recourse against the District Attorney, for me, or for anyone else. As you know, under North Carolina law, no one has the authority to take an active case from a DA absent the DA's own request, as finally happened in January of this year.

Even with all that, Duke needed to be clear that it demanded fair treatment for its students. I took that completely for granted. If any doubted it, then I should have been more explicit, especially as the evidence mounted that the prosecutor was not acting in accordance with the standards of his profession.

The larger problem for society at large -- It's what you've been discussing for several days -- is how to create and maintain the optimal balance between the independence of the legal system and the protection of individuals from false prosecutions. If this state should ever again have a rogue prosecutor on the loose with no more remedies than were available last time, the failure to learn the lesson of the Duke lacrosse case will be intolerable. I do not want to create some quickie legislative "solution" that in fact opens the doors to new injustices tomorrow. I recognize it is not easy to get the checks and balances right when two such important issues are at stake. But it is essential for all the relevant parties to work to create these mechanisms, and I hope the current conference will have contributed to that cause.

Closer to home, this case highlights challenges that universities face when their students are tied to serious criminal charges. These challenges have many aspects that involve questions like: How does a university advise students in such circumstances? How does the university regulate the presence on campus of students who have been charged with serious crimes? How does the university interact with parents? And many more.



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My colleagues and I in the Duke administration will be going over all of our procedures to see what we can learn from our recent experience. But these are complex questions, and they're ones Duke neither can nor should hope to resolve all by itself. To work through these difficulties and to see that their lessons are learned not just here but throughout the country, we will be hosting a national conference of educators, lawyers, and student affairs leaders to discuss best practices in this important and difficult field.

Finally, I will end with the deepest lesson this case taught me. When I look back through the whole complex history of this case, the scariest thing to me is that actual human lives were at the mercy of so much instant moral certainty, when the facts were not yet at all established. If there's one lesson the world should take from the Duke lacrosse case, it's the lesson of the danger of prejudgment and our need to defend against it at every turn. Given the power of this impulse and given the forces that play to it in our culture, achieving this goal will never be easy -- all the more reason why it's a fight in which all of us need to do our part.

Much of me hopes that the Duke lacrosse case will someday be forgotten. But if it is remembered, let's hope that it is remembered in the right way: as a call to caution in a world where certainty and justice come much too fast.