

**Until Proven Innocent: Political Correctness and the Shameful Injustices of the Duke Lacrosse Rape Case**, by Stuart Taylor, Jr., and KC Johnson. New York: Thomas Dunne Books, 2007, 432 pp., \$26.95 hardbound.

## Durham's Disgrace

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In 1994, when I was a relatively young law professor, I learned the hard way that American higher education had largely abandoned the freedoms to teach (*Lehrfreiheit*) and to learn (*Lernfreiheit*) that had made our universities the envy of the West. I had given a student a very poor final grade in 1L Torts: the grade was a (blind-graded) mediocre final exam score, adjusted down one notch for poor class participation. The student, an African-American woman, conceded to me that she deserved the poor class performance penalty (she had been unprepared for class when called

on, and the course syllabus clearly specified the penalty). Nonetheless, she warned that if I didn't increase her final grade she would accuse me of racial discrimination. She casually informed me that both at prep school in Shaker Heights, Ohio and at college at Northwestern, she had experienced similar "problems." In every case, she said, professors had "seen the light" and increased her grade.

The student's ensuing discrimination charge, and the hearings they provoked, earned me attention from most major newspapers and consumed two years of my career. During this time colleagues and law school administrators alike beseeched me to "pay the tax," increase the student's grade, and apologize for my nonexistent discrimination. By the time the law school, the university, and the federal Department of Education had dismissed my accuser's complaints, I had become a different person. But I was not suspended, imprisoned, or impoverished, and I was only threatened with bodily harm once.<sup>1</sup> Several

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<sup>1</sup>My family did receive one anonymous threatening phone call, but the coincidental advent of "caller ID" saved the day—when the caller phoned a second time to threaten my very young son with violence, and he read back the caller's name (he was a member of the George Mason Black Law Students' Association), the calls stopped forever.

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colleagues, who had rushed to jump on the “anti-racism” bandwagon against me, committed an injustice, but not one that damaged my ultimate faith in our legal system.<sup>2</sup>

The case of the 2005 Duke lacrosse team, and of three players (Dale Evans, Collin Finnerty, and Reade Seligmann) in particular, shows how much worse things have become: their plight demonstrates that the Rule of Law has now been weakened by these same forces. In a powerful journalistic compilation, Stuart Taylor and KC Johnson chronicle, decisively and irrefutably, what is arguably the most flagrant educational travesty of justice of the post-World War II era. The Dukies’ ordeal is, as was mine, one of iniquity and cowardice. But theirs is also a story of police and prosecutorial misconduct that should be discussed in every law school in the country.

A brief summary of the three players’ (and to a lesser but still wretched extent their teammates’) ballad is in order here. Duke’s successful and prestigious lacrosse team organized a team party at a house the team rented. The party

included the usual music and beer; in addition, tastelessly but legally, two striptease “artists” were to appear. The party organizers had contracted with an agency to provide dancers: the specific request was for two *Caucasian* dancers, presumably to avoid unseemly aspersions (all members of the lacrosse team save one were white, whereas Durham was much blacker and poorer). The agency had agreed to this request, but then blithely sent two African-American women to the lacrosse house. One of these women, Crystal Mangum, was a lost soul; a drug addict and a prostitute, an unintelligent, incoherent, and mentally ill woman with, it turned out, no apparent dancing skills.

Upon their arrival at the party, the two “dancers” collected their cash fee (\$800), after which Mangum proceeded to collapse on the stage. Following this inauspicious beginning, she commenced a crude simulated lesbian oral sex act with her fellow “dancer.” The lacrosse players, grossed out and ripped off, loudly hooted their disgust and ordered the women to leave. Their complaints put an ugly end to a dismal party. As the “dancers” prepared to leave, Mangum, enraged by criticism of her “performance,” told her colleague that she was going to extract much more money from the

<sup>2</sup>The student graduated from George Mason Law School (with an unchanged grade in Torts...). She never did attempt the Virginia Bar exam (I was ready to write to the Character and Fitness Committee had I seen her name on the list of Bar applicants) and, last I heard, she had moved to Pennsylvania.

players. She then again fell seemingly unconscious to the floor. Her companion departed, hurling as she left a gratuitous racial slur at a lacrosse player, who ill-advisedly responded in kind.

Meanwhile, players had called 911 for Mangum, who was taken to the hospital. A nurse asked her whether she had been sexually assaulted. Why, yes, she suddenly proclaimed, she had been gang-raped by three white Duke boys! Police were called in—but the attending officers did not believe the charge. DNA tests confirmed that no players had had any intimate contact with Magnum (though semen from four other men was found inside her...), who was unable to identify her assailants by face or by name. The charge was clearly baseless. So far, what we have is a story of college jocks defrauded by a pathetic woman who proceeded to aggravate her fraud with a groundless accusation. That this story spiraled into a judicial-academic travesty is due to a perfect storm of perfidy and cowardice. Had *any* of the villains in *Until Proven Innocent* been faithful to their duties, this tragedy would not have occurred.

Taylor and Johnson chronicle this storm in horrifying detail—indeed, the most remarkable characteristic of their book is that repeatedly, just as

the reader concludes that the laxers could not have been treated any more unjustly, the authors proceed to detail more, and more, and more injustice. In addition, Taylor and Johnson's report is never mind-numbing—I venture that many readers will plumb a sense of outrage whose depth they might not have experienced since 9–11. My only critique (perhaps only a major quibble?) of the authors is that they pepper their journalism with endless editorial “asides” about political correctness in higher education, media, and politics. These *obiter dicta* are all true, and are likely useful for the uninitiated, but they risk alienating left-leaning readers who might conclude that the authors are ideologues.

Such a charge is demonstrably false in the case of Taylor, a journalist who has skewered duplicity on the right and left throughout his extremely distinguished career—indeed, the book's emphasis on police misconduct (a left-wing concern) nicely balances its condemnation of “progressive” higher education. Nonetheless, I question the authors' decision to lecture readers from the get-go that the players are Dudley Do-Right and their accusers Snidely Whiplash. The facts the authors marshal are convincing without their encouragement/

hectoring; and their very useful epilogue about the current state of political correctness would have been icing on a “just the facts, Ma’am” cake. This critique is a matter of style more than of substance—essentially I am suggesting that the authors should have suppressed their own outrage, much as Harper Lee let Tom Robinson’s fate speak for itself.

In this brief review, I provide a scorecard. Herewith the principal *dramatis personae* of this postmodern *To Kill a Mockingbird*, along with my own one-word adjectival summary:

**Michael Nifong: Durham County District Attorney. EVIL.** This prosecutor committed numerous crimes and displayed such a profound disdain for the Rule of Law and for legal ethics that hundreds of thousands of law-and-order conservatives may be transformed into civil libertarians by his actions. Nifong, who is white, was focused on his upcoming election in black-dominated Durham. He decided that railroading “rich” white out-of-staters would ensure his election (he was right—it did). Nifong declined to communicate the lack of incriminating evidence and the cornucopia of exculpatory evidence to the grand jury (which was asleep), to the trial judge

(who was incompetent), or to the defense (which was valiant—see below). He lied constantly and serenely—he may be a sociopath. Nifong has thankfully been disbarred, but he served only one day in jail for his misdeeds. He is a disgrace to my profession.

**Tara Levicy: Trainee, Sexual Assault Nurse Examiner (SANE), Duke University Hospital. SPITEFUL.** Ms. Levicy, an ardent feminist who appeared in a *Vagina Monologues* production, examined Crystal Mangum at Duke Hospital, and accredited her statement of rape despite the lack of *any* corroborating evidence, because “rape is about power, not sex.” This nurse allowed her initial grossly negligent diagnosis to morph, CYA-style, into the intentional tort of defamation of the lacrosse players as the charges against them gained national stature.

“Kethra,” a fellow SANE nurse who posts on *Liestoppers*, (one of several blogs created in response to the Duke scandal), writes this about Ms. Levicy:

Ms. Levicy’s actions were unconscionable, unprofessional and the inherent sign of an incredibly biased person and nurse....By not telling the actual facts, by misrepresenting to the police the signs and symptoms

of a rape victim, by “embroidering” the true patient findings and historical story, by her sheer ignorance of appropriate forensic evidence collection technique, her sheer ignorance of basic pathophysiology, her sheer ignorance of general medical conditions and the identification of those conditions and by her glaring egotistical need to portray herself as an expert, she sent the police down the trail of deception. Combine that with a rogue prosecutor and shoddy police work (didn’t they read the stupid medical reports for themselves?) she almost put three innocent men in jail.

Levicy left North Carolina and apparently is now a licensed nurse in New Hampshire. Granite Staters, beware.

**Sergeant Mark Gotlieb and Corporal David Addison: Durham Police Officers. REPUGNANT.** A more poignant reminder that amoral cops can wreak terrible harm is hard to imagine. Sergeant Gotlieb, who hated Dukies, took over the case as soon as he heard about it and proceeded to assist in the fabrication of evidence against the laxers. Addison’s actions incited the community with false and inflammatory accusations that (white) jock rapists were

on the loose threatening (black) Durhamites (see “John in Carolina’s” blog for a summary of Addison’s libels).<sup>3</sup> That these two rogue cops have not been criminally prosecuted is a travesty. Incredibly, Addison has been *promoted* to sergeant. Both, however, along with the City of Durham, have been personally sued by the players in federal court for civil rights violations, so there is some hope that corrective justice will be meted out.

**Richard Brodhead: President of Duke University. CRAVEN.** President Brodhead disgraced his university through his failure to defend his students and staff. An inspiring English professor and undergraduate dean at Yale (I was enthralled by the welcome speech he delivered to my daughter’s matriculating class in August 2001), Brodhead is a disaster as Duke president. Instead of standing up for the Rule of Law, he pandered to local politicians whose rabble-rousing potential he feared. He named blatant racists to academic advisory boards created to “heal the wounds” resulting from the rape he rashly concluded had been committed. He refused even to consider the lacrosse players’ offers to con-

<sup>3</sup>“The Cpl. Addison Series,” posting on February 11, 2007, at John in Carolina, a personal weblog, <<http://johninnorthcarolina.blogspot.com/2007/02/cpl-addison-series.html>>.

clusively prove their innocence to him. He demanded the resignation of Duke's lacrosse coach, whose only sin was to have integrity and to do his job well. *Brodhead has never sincerely apologized for his cowardice.*<sup>4</sup> No parent should allow his or her child to apply to Duke as long as Brodhead is president.

**The Gang of 88. MALEFICENT AND COWARDLY.** Eighty-eight faculty members at Duke publicly shamed their university—the stain will remain until they all have left its employ. Taylor and Johnson detail the racial invective, the overt Duke-student-hatred, and the athlete-phobia of this group of Ward Churchill wannabes. *Until Proven Innocent's* compilation of diatribes and petitions by the Gang of 88 is so grotesque that were it to appear in *The Onion*, it would be deemed insufficiently plausible. That's the "maleficent" nature of the gang: its cowardice stems from the fact that eighty-seven of the eighty-eight refused to apologize after slam-dunk evidence of their defamation was published.

<sup>4</sup>On 29 September 2007, Brodhead, speaking at a two-day conference at Duke Law School on the practice and ethics of trying cases in the media, apologized for "causing the families to feel abandoned when they most needed support." Sorry, that doesn't cut it. They didn't just feel abandoned—they WERE abandoned by Brodhead. His milquetoast non-apology is another missed opportunity—another sign of moral weakness.

**The National Press. SOME MEAN-SPIRITED, SOME WEAK-KNEED.** It's hard to know where to start here. Worst of all is clearly the *New York Times* (anyone who still respects our *grande dame* must read *Until Proven Innocent*), but close behind are the *Washington Post*, the *Los Angeles Times*, and *USA Today*. Television anchors, prominently including Nancy Grace, sullied themselves by their own comments and by the perfidy of their "guest experts" (including ludicrous former prosecutor Wendy Murphy). For one notable media exception, see below.

**Mike and Sue Pressler: Duke Lacrosse Team Coach and Wife. EXEMPLARS.** Coach Pressler stood by his students, disciplining them when they messed up but building character exactly as sports coaches should. Pressler had fine men on his team, and he stuck by them even when it was made clear to him that his continued employment at Duke required betraying them. His wife Sue never tried to further her nuclear family's livelihood by betraying the extended family of laxers she had come to love. This fine couple is now the lacrosse first family at Division II Bryant University, in Rhode Island. That the Presslers were chased from Duke while quislings like Brodhead (salary: over \$500,000 per annum) remain is telling. Press-

ler's wrongful discharge suit against Duke has been quickly (and, one suspects, generously) settled by the university, by the way, as have been tort suits against the university by the families of the three players.<sup>5</sup>

**James E. Coleman: Duke Law Professor. STANDUP.** To its credit, none of Duke's law faculty joined the lynch mob Gang of 88. One law professor, Jim Coleman, chaired a committee that produced an early fact-finding report highly critical of the university and the DA's office. Coleman's study was the first warning sign for those willing to read it—something neither Brodhead (who had commissioned the study) nor the elite media was willing to do.

**Ed Bradley: 60 Minutes Reporter. WORTHY.** In his last story before his death from leukemia, Bradley risked "race-traitor" status by doggedly pursuing the truth. His public exposure of the fraudulent case against the laxers was the single event that, as Taylor and Johnson show, turned the tide in their favor.

**A few good men and women in Duke's undergraduate student body. FEARLESS.** Vilified and on

occasion even penalized by their professors, a small bipartisan group of Duke undergrads fought courageously for laxers whom they had never met. They mounted a Duke-registration drive that nearly unseated Nifong in his reelection bid. And they persistently embarrassed the preposterous Brodhead with their fearless habit of speaking truth to power.

**Select North Carolina and Maryland attorneys. VALOROUS.** These men fought back against the thugs of Durham's police and state's attorney's departments. Their fight was for a long time futile, thanks to Nifong's suborning of perjury and intimidation of exculpatory witnesses, but slowly they prevailed. These men make me as proud to be an attorney as Nifong makes me ashamed.

Crystal Mangum (**DEPRAVED**, though not as evil as Nifong), has never been sanctioned for making her false accusation. The three laxers' civil rights suit against Durham and individual policemen is pending—and my lawyer friends there tell me they are asking for way more than the city's insurance coverage... Meanwhile, Duke's undergraduate application mix has altered, thanks to *l'affaire des laxers*. There are now far fewer whites applying for admission and far more "people of color," report Taylor and Johnson. This may rejoice the ceaseless critics of white privilege in

<sup>5</sup>On 18 December 2007 three of the other Duke lacrosse players (ones not charged by Nifong) also filed suit against Duke, Nifong, and forty-three others involved in the case. They claim—plausibly—that they too were hurt by the smear campaign against the lacrosse team.

the Gang of 88, but for everyone at Duke, whatever their hue, surely the faintest scent of evil and cowardice must envelope them every day.

As Taylor and Johnson write, "Sometimes, in the course of human

events, something happens that lays bare the hypocrisy of a whole swath of people the way a big wind strips dead leaves from a tree in late autumn." The Duke lacrosse case, let us hope, has changed everything.