

Crisis and Criticism: Duke University and the Failures of the Lacrosse Case

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Abstract

Duke University was roiled in the spring of 2006 with allegations that members of the university's lacrosse team had raped a stripper hired to perform at a team party. The charges turned out to be false, and early in the process, a number of people in key positions at Duke and in the City of Durham, North Carolina, knew the charges were not true, yet the process of indictments and charges went on. This paper critically examines the conduct of the Duke administration during the crisis which ended when North Carolina Attorney General Roy Cooper declared he was dropping charges and the young men charged were innocent. We contend that Duke's administration not only failed in its response, but actually made the crisis worse because of failure to police its own employees whose legally questionable behavior helped spur the false charges. We also contend that these errors were not the result of simple bumbling, although there was some of that; indeed, the university was trying to protect the "Duke Brand," but a "politically correct" brand that Duke has been building for more than a decade.

1. Introduction

In mid-March 2006, what was supposed to be a routine spring break party for the Duke University lacrosse team turned into one of the most contentious situations in the history of American higher education. After the party had broken up, an African-American woman who the players had hired to perform as a stripper claimed that white three players had beaten and raped her for 30 minutes in a tiny bathroom of the off-campus house.

The accusation exploded into a major crisis for Duke University as well as the student-athletes and their families, as the local district attorney, Michael B. Nifong, who was trying to win an upcoming primary in which he

was behind in the polls, seized upon the accusations and indicted three players, David Evans, Collin Finnerty, and Reade Seligmann. Even before the players were indicted, Duke University fired the lacrosse coach, Mike Pressler. Also, before the indictments were handed down, evidence released by attorneys representing the players cast serious doubt on the veracity of the charges, and in the next several months, it became clear that Nifong's case was in serious trouble.

Even though Nifong would win the May 2006 Democratic primary as well as the general election the next November on the strength of African-American voters in Durham, it became evident the case was questionable, especially after a "60 Minutes" expose in October, 2006. At a hearing on December 15, 2006, attorneys for the indicted students uncovered the fact that Nifong and a private DNA laboratory had hidden exculpatory evidence from the defense, after Nifong specifically told a judge during a previous hearing that he had turned everything to the defense.

About two weeks later, the North Carolina State Bar filed formal charges against Nifong for statements he had made when the accusations first broke that allegedly violated the standards for attorney conduct. Those charges were amended a month later to include allegedly lying to a judge and withholding exculpatory evidence. (This was the first time in the state's history that the State Bar had filed charges against a prosecutor while the case still was active.)

Nifong reluctantly turned the case over to North Carolina Attorney General Roy Cooper, whose staff conducted a three-month investigation. On April 12, 2007, Cooper announced he was dropping all charges.¹ Furthermore, he declared that the three young men were "innocent" of any crimes, and he had some very harsh words for Nifong, calling him a "rogue prosecutor." That June, the North Carolina State Bar, after a lengthy public hearing, disbarred Nifong and in September, Nifong spent one day in jail after being found guilty of criminal contempt by Judge W. Osmond Smith for lying in court.

Yet, this hardly was the end to the infamous Duke Lacrosse Case. In the summer of 2007, Duke and the families of the three indicted players announced that they had reached a settlement, the details of which were not

¹ "Summary of Conclusions," released April 12, 2007:
http://www.newsobserver.com/content/news/crime_safety/duke_lacrosse/20070427_AGreport.pdf

announced. That fall, those players sued the city of Durham, North Carolina, a number of individuals in the Durham Police Department and city government, and Nifong.

After the U.S. Department of Justice turned down a request by Cooper to launch a criminal investigation into the conduct of Nifong and the Durham police, three lacrosse players who had not been indicted filed suit against Durham, Nifong, *and* Duke University. In February 2008, a number of other players and their families also announced they were suing Durham, Nifong, and Duke.²

While one might not be surprised to see Nifong and Durham sued by all of the families, the suits against Duke would seem to be more troublesome, even considering the settlement the indicted players reached with Duke in 2007. Because the details of the settlement were not announced, Duke's leadership did not make public the reasons it believed it was prudent to settle.

However, the other players' lawsuits have brought allegations of mismanagement and outright fraud on behalf of Duke's leadership and employees, especially employees of Duke University Medical Center, where the accuser, Crystal Gail Mangum, was examined after she claimed she was raped. Although this paper does not examine the merits of the suits, we believe that the fact that a number of players have sued Duke and its leadership demonstrates that possibly there were serious errors in the way Duke handled this crisis.³

In this paper, we explore the response of Duke's leadership to the crisis, examining crisis management situations by Mitchell (1989, 1989), Augustine (1995), Ulmer and Sellnow (2000) and others. Our analysis will show that when the rape charges created a crisis atmosphere, Duke's chairman of the board of trustees, Robert Steel, and Duke President Richard Brodhead, and others in the Duke administration undertook a number of actions, both overt and covert, that made things even worse after some of the university's employees engaged in what the attorneys representing the players have declared to be medical fraud. (In his report of the investigation,

² See the official website of the lawsuit, at www.dukelawsuit.com.

³ Those interested in exploring the substance of the suits also can find the material at the following website: <http://news.justia.com/cases/featured/north-carolina/nemdcce/1:2007cv00953/47494/>. This site contains the documents filed in the suit by players represented by Robert Ekstrand.

Cooper also strongly criticized the DUMC employee, a nurse who was training to be a sexual assault examiner.)

We further contend that the administration officials were not the bumbling truth-seekers, as they tried to portray themselves. Instead, we believe that the administrators were trying to protect what they called the “Duke Brand,” but a “brand” according to an image that Duke has been trying to project for more than a decade in which Duke is seen as promoting “diversity” and “multiculturalism.” In fact, as shall be demonstrated, the leaders of Duke University made sure that they would not be familiar with the facts of the case, an action (or inaction) that supposedly gave them cover.

Besides the alleged misconduct by employees at DUMC, faculty members, students, and some Duke staff also compounded the problems by rushing to judgment. Not only did they mount noisy protests on and near campus in which people held a sign calling for “castration” of the lacrosse players, but 88 faculty members signed an advertisement in the April 6, 2006, Duke Chronicle that clearly intimated that the players were guilty as charged. Faculty members openly called out lacrosse players in class, and many of the players were forced to leave campus after “wanted” posters were hung all over campus (after being printed in the John Hope Franklin Center at Duke, according to one lawsuit). Another faculty member allegedly engaged in grade retaliation against two lacrosse players, and Duke decided to settle that case, too.

When the players complained to Duke administrators about being verbally harassed by faculty members in class, they were told Duke could do nothing about it, even though the harassment clearly violated the standards of Duke’s faculty handbook (Johnson and Taylor, 2007). To make matters worse, Duke provided Nifong and the police with information about the players in violation of the Family Educational Rights and Privacy Act (FERPA), and then in a sham court hearing in the summer of 2006, attorneys from Duke along with Nifong pretended that no information had been given to the prosecutor.

We acknowledge that the Duke leadership faced difficult choices, and (as the models demonstrate), the early statements from the administration were an attempt to sound balanced, which enraged many critics of the lacrosse players, who wanted drastic action taken against them. However, we conclude that because Duke University’s administration was in possession of exculpatory information from the start, but failed to make that

information public, it helped to further the crisis and make matters worse.⁴ Later, members of the administration would refuse to look at the case file, despite an offer by the father of one of the indicted students and his attorneys.

In this paper, we draw not only from the academic models and some of the academic literature already published on this case, but also from news accounts and the information in the lawsuits. We will conclude that by failing to meet the standards set by the crisis management literature, Duke University's administration not only helped to ensure that innocent people would be indicted for crimes that never occurred, but also set up the university to be sued once the full extent of Nifong's fraud was uncovered.

Because the case has only begun to be discussed in the law books, we rely upon newspaper articles, the blogs which were devoted to the case (especially K.C. Johnson's "Durham-in-Wonderland") and two books that were written. Some academic literature has been devoted to it, although most of it does not deal with the content areas being discussed in this paper.

2. Crisis Management and Brand Name Protection

Most organizations, according to Fink (1986) and Perrow (1984) are going to face crises at one time or another. Some crises may bring down an organization altogether or at least have the potential to do serious damage. However, as Ulmer and Sellnow (2000) point out, it ultimately is the response to the crisis that will make or break the organization's reputation. In fact, they write that organizations can "benefit" from crises provided there is "effective communication" (p. 143). Certainly, the Tylenol crisis of 1982 ultimately enhanced the reputation of the manufacturer, Johnson & Johnson precisely because of the way the company quickly and forcefully responded. Other organizations, such as Jack in the Box were not as effective in how they communicated with the public and ultimately suffered serious loss of reputation (Ulmer and Sellnow).

In late September and early October 1982, seven people in the Chicago area died after taking potassium cyanide-laced Extra-Strength Tylenol capsules, the most successful pain reliever sold by Johnson & Johnson. (The killer or killers had taken them off the shelves of Chicago-

⁴ See "The Lying Game," by K.C. Johnson, Durham-in-Wonderland, July 7, 2008: http://durhamwonderland.blogspot.com/2008/07/lying-game_07.html

area stores, took the capsules apart, injected the poison, and then re-sealed the packages before putting them back on the shelves.)

Even though it was clear that the tampering came from outside the production of Tylenol, nonetheless it was a major crisis for Johnson & Johnson, and how the company handled it has become a standard for every other organization in crisis management. First, the CEO of Johnson & Johnson, James E. Burke, became the face of the company, and he made it clear that the company would seek to do what was best for its customers and be honest with the public.⁵ Second, Johnson & Johnson ordered a nationwide recall of Extra Strength Tylenol capsules, despite the fact that the danger at the time seemed to be limited just to the Chicago area.

Third, the leadership of Johnson & Johnson sought to ensure that the crisis not happen again, as it pioneered new ways of packaging its product to resist future tampering. (Unfortunately, there was another tampering death with Extra-Strength Tylenol Capsules in 1986, and the incident convinced Burke and company management to do away with the capsule altogether and introduce the caplet.)

According to Kaplan (1998), the Johnson & Johnson executives turned to the company's Credo, a document that former J&J Chairman Robert Wood Johnson wrote in 1943. Kaplan notes:

The credo was written in the mid-1940's by Robert Wood Johnson, the company's leader for 50 years. Little did Johnson know, he was writing an outstanding public relations plan. Johnson saw business as having responsibilities to society that went beyond the usual sales and profit incentives. In this respect, Foster explained, Johnson outlined his company's responsibilities to: "consumers and medical professionals using its products, employees, the communities where its people work and live, and its stockholders." Johnson believed that if his company stayed true to these responsibilities, his business would flourish in the long run. He felt that his credo was not only moral, but profitable as well.

As the Tylenol crisis began and became more serious as the hours went by, Johnson & Johnson top management turned to the credo for guidance. As the credo stressed, it was important for Johnson &

⁵ Knight, Jerry. "Tylenol's Maker Shows How to Respond to Crisis," *Washington Post*, October 11, 1982, P1.

Johnson to be responsible in working for the public interest. The public and medical community was alerted of the crisis, the Food and Drug Administration was notified, and production of Tylenol was stopped.

The aggressive campaign by Burke and the J&J management both saved the reputation of the company and also saved its product, as Extra-Strength Tylenol still is a trusted brand of pain reliever. While J&J suffered huge losses in 1982 and 1986 (Mitchell, 1989), nonetheless its actions did keep the brand name from being tarnished or even destroyed, despite predictions to the contrary by some marketing experts.

McAlister, Ferrell, and Farrell (2005) write that

Organizational crises are characterized by a threat to a company's high-priority goals, surprise to its membership, and stakeholder demands for a short response time. The nature of crises requires a firm's leadership to communicate in an often stressful, emotional, uncertain, and demanding context. (p. 50)

Indeed, as Ulmer and Sellnow point out, when Jack in the Box sought to minimize the damage that occurred after an outbreak of E. coli infections which killed three children, company management followed a strategy of ambiguity that the authors claim was "ethically questionable" and the firm suffered damage to its image (p. 143). Thus, the company not only had to deal with the fact that its products had led to the death of some of its customers but also had to later deal with the response to *its original response* to the crisis.

There are two other aspects of crisis management that are vital to understanding and evaluating the response. The first is the position (and preservation of) the "brand name" and the second is the role of perception. We deal first with the issue of the "brand name."

Mitchell and Maloney (1989) examine the effect of airline crashes upon perceived "brand name" quality, noting that a "reduction" of "product quality" will be associated with crashes that are caused by employee negligence. Anderson and Shah (2005) noted that Southwest Airlines received better treatment from the markets relative to other airlines following the 9/11 attacks in large part because Southwest had a "superior" corporate culture compared with other airlines and had developed a strong "brand name" among the flying public.

Indeed, there is a strong literature regarding the establishment of brand names. Klein, Benjamin, and Leffler (1981) and Klein, Crawford and Alchian (1978) have established that brand names give the perception of product quality. If there is a crisis associated with that hard-earned quality, however, a firm can suffer market losses that would exceed out-of-pocket costs, according to Mitchell (1989).

Augustine (1995) lays out six stages of crisis management that are crucial in understanding the successful weathering of crises. They are:

- Stage 1: Avoiding the Crisis;
- Stage 2: Preparing to Manage the Crisis;
- Stage 3: Recognizing the Crisis;
- Stage 4: Containing the Crisis;
- Stage 5: Resolving the Crisis;
- Stage 6: Profiting from the Crisis.

As shall be noted in Section 4, the Duke leadership failed especially in the third, and fourth stages. For example, in dealing with the fourth stage, Augustine writes:

...a single individual should be identified as the company spokesperson, the one who makes all public comments. This lesson stems from another of my laws: If enough layers of management are superimposed on top of one another, it can be assured that disaster is not left to chance.

Third, a company's own constituencies--its customers, owners, employees, suppliers, and communities--should not be left to ferret out information from the public media. With all the pressures on management to respond to news reporters, one must not neglect those who have a special need for information.

And fourth, a devil's advocate should be part of the crisis management team--someone who can tell the emperor in no uncertain terms when he is wearing no clothes (p. 156)

In Stage 3, Augustine writes that executives often will fail to recognize they have a crisis, or misjudge the nature of the crisis. As will be noted later, we find that the Duke leadership seemed to believe they had a problem as defined by the prosecutor and the media: that three athletes had

raped and beaten a black woman at a team party. However, the real problem, and one that would result in the loss of millions of dollars, was the university's important role that it played in helping to secure the wrongful indictments.⁶

Penrose (2000) writes that the perception of the company's management of crises will affect how the organization deals with them. In fact, as he points out, a crisis may provide an opportunity in that they will bring a change in procedures, leadership, and also provide vital information needed in dealing with future crises.

Certainly, both the "brand name" classification as well as the perception of the administration to the crisis fits with our examination of how the Duke University administration handled the lacrosse crisis. Although Duke University is not a publicly-traded, for-profit corporation, certainly the university administration's response to those events of 2006 and early 2007 would have affected the perception of Duke as a "quality" institution. We give a critical examination of the university's response from a "brand name" perspective in Section 4.

Likewise, as we will point out, the leadership of the administration, as well as a number of vocal faculty members, saw the crisis as a way to "remake" Duke University, or at least to remake the "perception" that others had of the university. Indeed, much of Duke's response to the original charges clearly can be seen in this light. However, Penrose also writes that an organization's leadership can view the events of a crisis as a "threat," which "will cause managers to limit the amount of information they consider." Indeed, we believe the Duke leadership saw the evidence that exonerated the lacrosse players as a "threat" both to community relations in Durham and to its attempts to remake certain perceptions of the university. Thus, despite early public statements by Duke President Richard Brodhead that both condemned the lacrosse players *and* gave a weak endorsement to proper legal procedures, the university leadership actively ignored exculpatory evidence that ultimately cleared the players of criminal charges.

There is no doubt that the lacrosse case represented a huge public relations problem for Duke, according to Dufresne and Clair (2008). The contrast with Duke and its "preppy," mostly-white student body contrasts with Durham, where it is located, which is almost 50 percent African-

⁶ See K.C. Johnson, "Duke's \$5M Defense?" Durham-in-Wonderland, January 19, 2009: <http://durhamwonderland.blogspot.com/2009/01/dukes-5m-defense.html>

American, which already strained the proverbial town-gown relationships (Johnson and Taylor, 2007). Duke's leadership did not only have to deal with the specific issues of three of its students being charged with rape, but also the fact that the case presented a worst-case scenario in regards to the university's relations with Durham and its African-American population.

It is clear from reading even a small portion of the organizational crisis literature that there are certain items that are seen as common to any effective response. First, as the Tylenol case demonstrated, an open and up-front approach will receive high marks both from critics and allies. Second, if people can see that the organization is taking steps to deal with fundamental causes or problems (as Johnson & Johnson did with its repackaging initiatives to prevent future tampering).

However, if the leaders of an organization facing a crisis attempt to obfuscate or lay the blame elsewhere, as Ulmer and Sellnow point out was the problem with the Jack in the Box response to the *E coli*. poisoning deaths, then the organization will suffer not only the damage that the crisis itself caused, but also be perceived as being led by less-than-honest people. Thus, future relationships with consumers and the public also are damaged.

As we will point out, the Duke response more closely mirrored the reaction of the Jack in the Box leadership than it did anything that came from Burke and Johnson & Johnson. In the third section, we will detail some of the activities of the administration following the breaking news of the crisis, and then we will interpret them according to crisis management analysis, as well as assess the damage done to the university, in the fourth section, and then we will conclude.

3. The Party, the False Charges, and the Response of the Duke Administration

In putting together this section, we rely heavily upon Yaeger (2007) and Johnson and Taylor (2007), as both of those accounts are well-researched. Furthermore, the Yaeger book was personally vetted by Duke's lawyers before it was published, despite the content that presented the university in a bad light.⁷

Duke University was on spring break on March 13, 2006, but the lacrosse players remained in Durham to practice. Because many of the 47

⁷ One of the authors of this paper received this information personally from Mike Pressler

players on the roster were under age 21, they would not be able to get into a local strip club. Thus, two of the team's captains, David Evans and Dan Flannery, decided to bring strippers to the team party.

Despite the later protests by Duke administration and faculty, this was not unusual for university students to have such parties, especially since it was legal in North Carolina. Johnson and Taylor write:

...this sort of thing was not uncommon at Duke. The basketball team, which enjoyed godlike status on campus, had hired strippers for a party just two weeks before. Over the 2005-2006 academic year, fraternities, sororities, and athletic teams hired strippers for more than 20 parties. (p. 17)

That the lacrosse captains hosted the party with strippers still is a fundamental part of Duke University's defense against the lawsuit filed by a number of present and former players and their families, but there is no doubt that the team had not done something that would have been considered unusual at Duke. However, the party broke up in a way that would greatly embarrass the team and others associated with Duke.

The two "dancers," Kim Roberts and Crystal Mangum, were paid \$400 each up front, ostensibly to "dance" for two hours. They actually "performed" for about five minutes before running into the bathroom of the tiny house at 610 N. Buchanan Boulevard, next to the Duke campus. (Evans, Flannery and Matt Zash, the three captains of the 2006 lacrosse team, lived there.) Ultimately, the women left, but not before some ugly, racially-charged exchanges just before they drove away from the house.⁸

Roberts drove to a nearby Kroger parking lot, but Mangum refused to leave the car, so Roberts called the police. An officer decided that Mangum, who seemed to be drunk, be taken to Durham Access, which takes in people treated for mental disorders.⁹ While checking her in, a nurse asked Mangum if she had been raped (a violation of the rules of Durham Access), and Mangum nodded. Under law, that "admission" meant she had to receive a

⁸ Roberts allegedly yelled a racial comment to one of the players, who replied, "Tell your grandfather thanks for my nice cotton shirt." Another player allegedly yelled, "We asked for whites, not n-----s." Roberts called 911 and gave some conflicting stories that would further up the racial ante when the 911 call was played on the radio (Johnson and Taylor).

⁹ Mangum had been hospitalized before for mental disorders and had taken a number of anti-psychosis drugs (Johnson and Taylor). Her medical records remain under seal.

rape exam, so the officer, Sgt. John Shelton, drove her to Duke University Medical Center.

After arriving at DUMC, Mangum “recanted” her accusations to Shelton, and then reversed herself. She told a number of conflicting stories, and Shelton loudly announced to the others at DUMC that he did not believe her (Johnson and Taylor, Yeager). According to the lawsuit filed by Robert Ekstrand, the case almost ended there, but was picked up by Mark Gottlieb, a Durham police officer who allegedly had an animus for Duke students.¹⁰ Gottlieb would breathe new life into the case.

Although DUMC was supposed to have a Sexual Assault Nurse Examiner (SANE) on duty at all times, none was available until Tara Levicy, a SANE-in-training who was not even legally qualified to do a rape examination reported for work early the morning of March 14. A resident, Julie Manly, actually did the exam, but Levicy signed the examination sheet as though she had done the exam, even though she only was an observer (Johnson and Taylor). Although the medical exam did not report anything close to injuries that could have occurred from the alleged rape that Mangum described, nonetheless Levicy told Gottlieb that she was convinced there had been a rape, and that the “victim” had suffered “blunt force trauma.” Levicy would become a potential “star” witness for Nifong, but Levicy’s inexperience and alleged falsification of medical evidence ultimately would prove to be a continuing problem for Duke University (see Ekstrand lawsuits).

On March 16, Durham police officers came to 610 N. Buchanan, accosted the three captains, and accused them of raping Mangum, which the captains denied. They then went voluntarily to the police station (without legal counsel present), gave statements, and permitted police to take DNA samples. They also offered to take lie detector tests, which the police denied (Johnson and Taylor). Later, when the story hit the news, the police would falsely accuse the lacrosse players of putting up a “wall of silence,” something that the Duke administration already knew was not true, but would not publicly declare (Johnson and Taylor).

Within 10 days, the story hit the mainstream press with a number of hostile articles coming from the Raleigh News & Observer, including an interview with Mangum in which the reporters made no pretense of their

¹⁰ See Ekstrand complaint against Sgt. Mark Gottlieb:
<http://news.justia.com/cases/featured/north-carolina/ncmdce/1:2007cv00953/47494/>

beliefs that there had been a rape. N&O columnist Ruth Sheehan quickly followed with a “Team’s Silence is Sickening” column in which she repeated the “wall of silence” accusations from the police.¹¹ Other newspapers, including the New York Times and USA Today followed with equally accusatory pieces. Journalists from all over the world descended upon Durham and Duke University, overwhelming everything. Writes Smolkin (2007):

National and international coverage tended to focus on strains between “town and gown,” depicting an elite, largely white university colliding with the working-class, racially mixed city that surrounds it. The privileged nature of Duke’s students, particularly its athletes, was frequently invoked; references to Duke’s “Gothic” architecture and the schisms of the Old South were also popular. Several accounts noted that Duke was thought to be the model for the hard-partying, elite institution portrayed in Tom Wolfe’s 2004 novel, “I Am Charlotte Simmons,” which also featured rich lacrosse players.

There was no way for Duke’s administration, faculty, and students to be able to ignore this overwhelming amount of negative coverage, which was made worse by more than 70 interviews given by Durham County District Attorney Michael B. Nifong, who was pursuing this case in the heat of a close, upcoming primary election (Johnson and Taylor). Nifong, who later would be disbarred for making false and inflammatory pre-trial public statements and for lying to a judge about withholding exculpatory evidence, clearly was throwing the journalistic equivalent of “red meat” to the media, which quickly gobbled it and demanded more. (According to Smolkin, the New York Times itself would run more than 100 stories about the case, and Johnson and Taylor – Taylor himself a former Times legal reporter – especially singled out the Times for its “biased” coverage.) Writes Smolkin:

“It was too delicious a story,” says Daniel Okrent, a former New York Times public editor, who is critical of the Times’ coverage and that of many other news organizations. “It conformed too well to too many preconceived notions of too many in the press: white over black, rich over poor, athletes over non-athletes, men over women, educated over non-educated. Wow. That’s a package of sins that really fit the preconceptions of a lot of us.”

¹¹ See the following stories: Khanna, Samiha and Anne Blythe, “Dancer Gives Details of Ordeal,” Raleigh News & Observer, March 25, 2006, 1A., Nesbitt, Jim, Benjamin Niolet and Lorenzo Perez, “Team Has Swaggered for Years,” Raleigh News & Observer, April 9, 2006, 1A., and Sheehan, Ruth, “Team’s Silence is Sickening,” Raleigh News & Observer, March 27, 2006. <http://www.newsobserver.com/1105/story/422462.html>

There can be no doubt that the Duke administration faced a real crisis. Journalists were circulating an “Old South” image of the university, and students and some faculty members were in full-scale revolt. Certainly the media coverage place tremendous demands upon President Richard Brodhead and Duke’s board of trustees, chaired by Robert Steel.

To mollify the critics, Brodhead canceled the lacrosse season – despite the fact that Duke’s lacrosse team was a favorite to win the NCAA championships in 2006 – fired Coach Mike Pressler, and denounced the team on April 5 in a “letter to the Duke community, declaring:

Allegations against members of the Duke lacrosse team stemming from the party on the evening of March 13 have deeply troubled me and everyone else at this university and our surrounding city. We can’t be surprised at the outpouring of outrage. Rape is the substitution of raw power for love, brutality for tenderness, and dehumanization for intimacy. It is also the crudest assertion of inequality, a way to show that the strong are superior to the weak and can rightfully use them as the objects of their pleasure. When reports of racial abuse are added to the mix, the evil is compounded, reviving memories of the systematic racial oppression we had hoped to have left behind us.

If the allegations are verified, what happened would be a deep violation of fundamental ethical principles and among the most serious crimes known to the legal system. Such conduct is completely unacceptable both within the university and in our society at large. If the truth of the allegations is upheld, it will call for severe punishment from the courts and from Duke’s disciplinary system. This university has cooperated and will continue to cooperate to the fullest to speed the ongoing investigation by the police, and I pledge that Duke will respond with appropriate seriousness when the truth is established.¹²

What Brodhead did *not* say in his letter was that evidence that the charges were a lie already existed. First, questions already were being raised about Levicy’s actions and qualifications, and even today, one has to ask why the DUMC legal department and the Duke administration permitted a

¹² See “Letter to Our Community from President Brodhead”:
<http://dukenews.duke.edu/2006/04/rhbletter.html>

rookie nurse to go outside her professional qualifications and to become a “star” witness when clearly she was not medically qualified to be making the serious analysis that she was giving Nifong.¹³

Second, Brodhead already had refused offers by attorneys representing the players to examine the case file to see the evidence that already existed that there had been no rape (Johnson and Taylor). He would refuse the same offer in the summer of 2006 when Kevin Finnerty, the father of Collin Finnerty, personally offered to make the entire case file the attorneys possessed available to Brodhead (Johnson and Taylor).

However, Brodhead already was under fire from a number of members of the Duke faculty for not taking a hard enough stand. The faculty unrest would culminate in the publication of an advertisement signed by 88 faculty members in the April 6, 2006, Duke Chronicle which praised the protesters and made clear that they believed the charges had a basis in fact.¹⁴ (Nifong did not announce indictments until April 17, 2006, and two days later Brodhead told the Durham Chamber of Commerce that even if the charges were not true, “Whatever they did is bad enough.” [Johnson and Taylor, p. 190].).

Shortly after Seligmann was indicted, his counsel, the late Kirk Osborn, posted powerful evidence of Seligmann’s innocence on his law firm’s website. Included were photos of Reade standing before an automatic bank teller at precisely the time when Nifong was claiming that he and others were raping Mangum. He also secured an affidavit from a cab driver, an African immigrant named Moez Elmostafa, who would swear under oath that he had picked up Seligmann (who left the party early) at a time that would preclude his being at the alleged rape site.

(In response, Nifong ordered Elmostafa to be arrested and tried on charges of a questionable three-year-old warrant. A judge in August, 2006, found the charges to be baseless. Neither Brodhead nor anyone else in an official capacity at Duke University spoke out about Elmostafa’s arrest or Seligmann’s alibi. Furthermore, at a bond hearing, Seligmann received a number of shouted death threats while walking to the courtroom and inside

¹³ To gain a more in-depth look at Levicy’s actions, read the complaints against her both in the Ekstrand suit and the lawsuit filed in February, 2008, by the law firm of Cooper Kirk of Washington, D.C.

¹⁴ “We’re Listening,” Duke Chronicle, April 6, 2006:
<http://www.dukenews.duke.edu/mmedia/pdf/socialdisasterad.pdf>

the courtroom as well. No one in an official capacity at Duke ever spoke out against this abuse [Johnson and Taylor].)

Throughout the rest of 2006, the defense hammered away at Nifong's case. In October of that year, after a new judge in the case, Osmond W. Smith III, lifted a gag order and "60 Minutes" did its first of three stories on the case.¹⁵ It was clear from the October episode – the last story done by correspondent Ed Bradley before he died from leukemia – that the journalists at CBS, at least, believed the charges were wholly false. In his interview with Bradley, a tense Brodhead simply deferred to the legal system, although he added that Nifong's case would "be on trial" as well.

Earlier that summer, lawyers representing Duke University put on a legal charade in the Judge Kenneth Titus' courtroom. Nifong during a hearing demanded that federally-protected keycard information about the players be turned over to him. Duke's lawyers argued that they did not have to do it, and it would be illegal without the permission from the players. However, neither side told the judge that Duke already had secretly given Nifong that information (illegally) the previous April, and that the hearing itself was a sham.¹⁶

The Duke administration responded in yet another way, creating one ad hoc committee made up of administration and faculty members to examine the Duke lacrosse team and its history to see if the accusations that the lacrosse players were especially "bad actors" were true. James Coleman, a well-respected law professor at Duke (and an African-American) headed that committee.

Duke also commissioned a report co-authored by William G. Bowen, a former president of Princeton University, and Julius L. Chambers, a former chancellor of North Carolina Central University, the historically African-American institution also located in Durham, and where Mangum was taking classes at the time. This report examined the response of the Duke administration to the crisis.

The results were mixed. The Coleman Report, while criticizing the players for drinking too much (although the report added that this hardly was unusual on college campuses), also commended the team for its exemplary

¹⁵ See "Duke Rape Suspects Speak Out," CBS "60 Minutes," October 15, 2006:
<http://www.cbsnews.com/stories/2006/10/11/60minutes/main2082140.shtml>

¹⁶ See K.C. Johnson, "Alternate Realities," Durham-in-Wonderland, December 22, 2008:
http://durhamwonderland.blogspot.com/2008/12/alternate-realities_22.html

behavior on trips and noted that the players also were conscientious students (Johnson and Taylor)¹⁷.

The Bowen-Chambers Report, however, painted a different picture of the team. First, Bowen and Chambers interviewed only the faculty critics of the lacrosse players, including Karla Holloway and Houston Baker.¹⁸ Holloway wrote in a journal paper that in this case, “White innocence means black guilt,” and painted a picture of the team as a bunch of racist hooligans. (Holloway, 2006)

Baker went even farther, sending a letter to the Duke administration attacking the team and demanded that all of the lacrosse players be forced to “cooperate” with the police. Baker, who also sent taunting emails to parents of the lacrosse players, including one in which he told the mother of a player that her son was a “farm animal,” (Johnson and Taylor) wrote in his letter to the administration:

There is no rush to judgment here about the crime ... nor the harms to body and soul allegedly perpetrated by white males at 610 Buchanan Boulevard. But there is a clear urgency about the erosion of any felt sense of confidence or safety for the rest of us who live and work at Duke University. The lacrosse team - 15 of whom have faced misdemeanor charges for drunken misbehavior in the past three years - may well feel they can claim innocence and sport their disgraced jerseys on campus, safe under the cover of silent whiteness. But where is the black woman who their violence and raucous witness injured for life?¹⁹

Duke’s administrators did not limit their actions to formal responses, as at least one key administrator also spoke frequently to reporters off the record. John Burness, who then was Duke’s vice president for public affairs and the official spokesperson for Duke University, told a large number of reporters that the lacrosse players and their families were especially “bad actors” who were troublemakers (Johnson and Taylor, Yaeger). These

¹⁷ See the Duke University webpage for Coleman Report:
<http://www.duke.edu/search/?q=coleman+report>

¹⁸ Bowen, William G. and Julius L. Chambers, “The Duke Administration’s Response to Lacrosse Allegations,” May 4, 2006: <http://news.duke.edu/mmedia/pdf/Bowen-ChambersReportFinal05-04-06.pdf>

¹⁹ See “Awaiting the Restoration of Confidence: A Letter to the Duke University Administration,” March 29, 2006, from Houston A. Baker:
http://www.dukenews.duke.edu/mmedia/features/lacrosse_incident/lange_baker.html

comments helped to reaffirm to the journalists that their rush to judgment about the players' guilt and their attacks on the team itself were justified. Larry Moneta, Duke's vice president for student affairs, also made private comments about his belief that the charges were true, and Robert Steel, chairman of the Duke Board of Trustees told a number of people that "something terrible happened" at the party (Johnson and Taylor). All of these actions increased the burden upon the players' defense team, as the media uniformly gave a very negative – and stereotypical – picture of Duke's lacrosse players (Anderson, 2008).

Despite the fact that prosecutors are very powerful and influential in the North Carolina, Nifong's case ultimately fell apart. However, other than Coleman, no one from the Duke administration and no other prominent member of the faculty spoke out about Nifong's conduct and abuse of due process (Johnson and Taylor) until chemistry professor Steve Baldwin and Mike Munger, chair of the political science department did so later in 2006. (Seventeen members of the economics faculty signed a letter in January, 2007, in which they stated they would welcome the lacrosse players into their classes.)

In fact, three days before Attorney General Cooper's announcement that the indicted players were "innocent of all charges," Burness in an interview with *Newsday*, disparaged the indicted players, saying they "were no choirboys," and also had harsh words for former coach Mike Pressler, which led Pressler to file a slander suit against Burness and Duke.²⁰ Other Duke faculty members continued to cast doubts on the players' innocence. Biology professor Sheryl Broverman told *Newsday* right after Cooper's announcement:

Since we haven't gone through a normal legal process, we don't know what really happened. The fact the charges were dropped doesn't mean nothing happened. It just means information wasn't collected appropriately enough to go forward.²¹

One must keep in mind that Cooper's announcement came after an exhaustive investigation by two of the most respected prosecutors in North

²⁰ Dalesio, Emery P. "NC appeals court hears Duke lacrosse slander suit," *The Baltimore Sun*, January 14, 2009: <http://www.baltimoresun.com/sports/college/lacrosse/bal-dukela0114,0,2581504.story>

²¹ Mallia, Joseph and Bart Jones, "Duke lacrosse no longer the accused," *Newsday*, April 12, 2007: <http://www.newsday.com/community/news/southshorenassau/ny-licase0411,0,5900936.story?page=1>

Carolina, Mary Winstead and James Coman. In fact, as Johnson and Taylor point out:

...Coman and Winstead had clear grounds to dismiss the case immediately due to insufficiency of evidence and the likelihood that the judge would suppress Mangum's identifications as manifestly unreliable. but the two prosecutors decided that they owed the public – and the accused players – an investigation comprehensive enough to document the full truth of the matter. And so they proceeded, exhaustively.... (p. 349)

The contrast to Broverman's statement to Newsday to the description of the actual investigation cannot be exaggerated. Furthermore, Coman and Winstead were adamant in their belief in the innocence of the players. Write Taylor and Johnson:

...Coman and Winstead had seen enough. The attorney general needed not only to dismiss all charges but to declare Evans, Seligmann, and Finnerty innocent, they told him. (p. 350)

But Broverman was not the only Duke faculty member to openly challenge the attorney general's investigation and subsequent decision to dismiss the charges. Sally Deutsch, a history professor who signed the infamous April 6 *Chronicle* advertisement (and later was promoted to be Duke's Dean of Social Sciences), confronted a colleague of K.C. Johnson while at a conference. She insisted that the only thing that had happened was that the charges had been dropped, not that there was any proof of innocence.²² Indeed, both Collin Finnerty and Reade Seligmann decided even after the "innocent" findings that they would transfer from Duke, even though the university had offered to re-admit them. (David Evans had been graduated in May, 2006, just before he was indicted.) As pointed out earlier, all three reached a settlement with Duke later that year.

As will be discussed in the next section, many of the university's actions not only heightened the crisis, but also led to something unprecedented in the history of American higher education: a request for a change of venue based in part upon the belief that the actions and statements of a university's faculty, administration, and employees would make it impossible for the three accused students to receive a fair trial in Durham

²² "Group Profile: The Deutsch Files," Durham-in-Wonderland, May 30, 2007: <http://durhamwonderland.blogspot.com/2007/05/deutsch-files.html>

County (Johnson and Taylor, p. 305).²³ In fact, the attorney who prepared the motion, James Cooney, also has been hired by Duke University to defend the university in another lawsuit, and Cooney is a Duke University graduate.

Cooney includes a chant by protesters, which included Duke students, staff, and faculty in which they shouted outside the windows of a house where some lacrosse players lived:

Who's being silent?
They're being silent!
Who's protecting rapists?
They're protecting rapists!

So, who are the rapists?
They must be the rapists!

Out of the house!
Out of the town!²⁴

4. Obfuscation and Protecting the New “Duke Brand”

In our analysis of the Duke response to the crisis, we use the crisis models and lessons and then compare them to what actually transpired. At the outset of this section, we also acknowledge that everyone, including one of the Duke administration's strongest critics, attorney Jason Trumpbour, a former Maryland prosecutor and Duke Law School graduate, and an outspoken critic of the administration's response, have agreed that the pressures on the administration were extraordinary, and that no one was expecting a “perfect” response.²⁵

The issue, however, is not whether Duke's administration made errors in the response, but rather the actions taken by people at Duke that made the crisis worse than it should have been. Furthermore, we also acknowledge that a university – and especially a university with the high profile of Duke – is not organized as a business corporation. For example, once Burke was recognized as the official voice of Johnson & Johnson, no

²³ See the Change of Venue Motion:

http://www.newsobserver.com/content/news/story_graphics/20061215_dukelacrosse.pdf

²⁴ Change of Venue Statement, page 8.

²⁵ Trumpbour began and maintained a website, “Friends of Duke University,” and made a number of comments on that site: <http://friendsofdukeuniversity.blogspot.com/>

one else spoke officially for the company unless his or her statements were vetted by the company's leadership.

As a university with a large faculty, many of them tenured, Duke was in a situation in which faculty members felt free to speak out – and they did. Faculty, some employees, and many students participated in mass rallies on campus, including one rally in which participants displayed a banner that called for the lacrosse players to be “castrated” (Johnson and Taylor, Yaeger). Any attempt by the administration to silence the individuals who spoke out, especially in the early days of the crisis, clearly would have met resistance and would have been called an infringement upon academic freedom.

However, some faculty, staff and students did things that clearly crossed the line, and have found their way into the change of venue document and later the lawsuits. The university leadership made it clear that it would make no attempt at all even to question the faculty role in making things worse. Among the activities that the faculty members and staff did that at the least were morally questionable included:

- Creating a “wanted” poster with the pictures of 40 lacrosse team members to be distributed on campus, with the posters being copied on university copiers;
- The harassment of lacrosse players in class by professors, some of whom outright called their students “rapists” in front of their peers. These actions clearly were violations of the university's faculty handbook, but the administration refused to enforce those policies (Johnson and Taylor) and in the lawsuits has claimed were not binding to faculty members or the university;
- The administration shut down a voter registration drive outside the football stadium during the September 30, 2006, homecoming game. Some voters in Durham were launching a recall petition against Nifong, and students at Duke, including lacrosse players, wanted to register people to vote. This was done in violation of the Higher Education Act of 1998 (Johnson and Taylor);
- Demonstrations led in part by faculty, staff, and students that drove many of the lacrosse players completely off campus, with some being forced literally to live out of their cars (Johnson and Taylor);
- “Off the record” statements by John Burness that savaged the players and their families, despite the fact that Burness was the official spokesperson for the university;

- Duke faculty member Houston Baker appeared on CNN's "Nancy Grace Show" on April 5, 2006, and declared that the lacrosse players "had been given special privileges so that they could make up courses in the summer and that they had showed up at these courses drunk and indifferent." Baker never produced any evidence for these claims, but the university leadership did not issue any public corrections;
- Permitted Tara Levicy, a SANE-in-training at DUMC to make statements to the district attorney that clearly were out of the scope of her expertise. In fact, Attorney General Cooper specifically cited Levicy's actions as not being based "on objective evidence" (p. 20). Even when it was clear Levicy had not done the SANE exam on Mangum (despite signing the report saying she had done it), no one at DUMC or Duke University ever attempted to stop her or even question what she was doing;
- The university illegally shared FERPA-protected information about the lacrosse players with Nifong's office, and then participated in a sham hearing in which the university's lawyers tried allegedly to keep Nifong from having that information. Such action by Duke's leadership violated federal law.

On top of these questionable activities by faculty and employees, Duke's leadership also proved it was tone deaf even after Cooper exonerated the players. In early February, 2008, Duke University sponsored an appearance of "The Sex Workers' Show" in which strippers engaged in things like having a transvestite have "F*ck Bush" written on his chest and crawling about with a sparkler extending from his rear end, and other such acts of stripping and simulated sex. This came after Brodhead already had sent an email to Duke students in 2006 following the lacrosse party, writing that the hiring of strippers "irresponsible" and "dishonorable," and he later told Ed Bradley of "60 Minutes" that the team's hiring of strippers was "highly unacceptable conduct."²⁶

Clearly, the university's leadership went against the tenets set out by anyone who has written on crisis management. For example, Augustine urges leaders of organizations not only to properly recognize the crisis, but also to control the information that comes out of the organization. Given that Duke is a university and not a business corporation, We already have

²⁶ Butler, Kristen. "Return of the Stripper," Duke Chronicle, February 12, 2008:
<http://media.www.dukechronicle.com/media/storage/paper884/news/2008/02/12/Columns/Return.Of.The.Stripper-3203532.shtml>

established that there is no way the university could have kept everyone silent.

However, it also is also clear that the one place where the university could have controlled the comments of its employees was in the administration. Brodhead could have done like James Burke and become the main spokesperson for the university, or he could have given those duties to Burness. Instead, both Brodhead and Burness and sometimes Board Chairman Robert Steel made statements, and to make matters worse, Burness made a large number of off-the-record to journalists that falsely confirmed the “bad actors” theme that played so well in the news media and only heightened the crisis.

Early in the case, Nifong and the Durham police made a number of public statements that the lacrosse players had put up a “wall of silence,” which led to scathing attacks in the media, including a column by Raleigh News & Observer writer Ruth Sheehan, “Team’s Silence is Sickening,”²⁷ and “When Peer Pressure, Not a Conscience, Is Your Guide” by Selena Roberts in The New York Times in which she directly accused the players of having a “code of silence.”²⁸ However, the record was clear – and the players and their attorneys had made it clear to Brodhead – that the players had cooperated with investigators from the very start. There was no “wall of silence,” and the reason that no lacrosse player “came forward” was there was no rape to report.

However, despite having this information, Brodhead never tried to set the record straight with the media or anyone else. Part of the reason, no doubt, was that Brodhead, as president of Duke University, had to satisfy multiple constituencies. Not only was there the lacrosse players to consider, but also the university’s faculty, many of whom were among the protesters, the North Carolina NAACP, which had its headquarters in Durham, as well as its reputation as an institute of higher learning. The university made its choices, and they were made very clear in the following exchange between Coach Mike Pressler and then-Duke Athletic Director Joe Alleva. After Alleva informed Pressler that the season would be canceled, Pressler recalls (Yaeger):

²⁷ Sheehan, Ruth, “Team’s Silence is Sickening,” Raleigh News & Observer, March 27, 2006. <http://www.newsobserver.com/1105/story/422462.html>

²⁸ “When Peer Pressure, Not a Conscience, Is Your Guide,” Selena Roberts, The New York Times, March 31, 2006: <http://select.nytimes.com/2006/03/31/sports/31roberts.html?scp=13&sq=selena%20roberts%20+%20duke&st=cse>

I was shocked. I responded by saying, “You promised the players to their faces there would be no more forfeiture of games unless charges were brought. What new has happened? Joe, you told the players and the parents you believed their story, you believed in them, you believed they were telling the truth. It’s all about the truth; we must stand for the truth.”

Alleva looked right at me and made the statement I’ll never forget as long as I live: “It’s not about the truth anymore,” he said. “It’s about the integrity of the university, its about the faculty, the city, the NAACP, the protesters, and the other interest groups. (pp. 165-166)

Once the university’s leadership made the choice to mollify the critics, then the rest of the things that Brodhead and the Duke administration did seem to fall into a predictable and understandable pattern. The players would have to win the case in a court of law, or as Brodhead put it, “Proving themselves innocent.”²⁹

The criminal case ultimately fell apart, especially after the December 15, 2006, hearing in which Nifong’s DNA expert, Brian Meehan, admitted under cross examination that had and Nifong had agreed to withhold information from the defense that Nifong already had said in court that he had turned over. Once Nifong had been caught lying in court, the rest of his case crumbled, and even though he would try to change the charges a few days later in hopes of keeping the case alive, within four months, all charges were dismissed and Nifong was further disgraced by being disbarred and then being sent to jail for a day by Judge W. Osmond Smith, III, for lying in court.

Although Duke had possession of exculpatory evidence, nonetheless the exoneration of the players came in spite of the university and certainly not because of anything the university’s leadership did. Brodhead later would apologize to the players in a public statement, but the damage had long been done.³⁰ The question is why did the university essentially back up a prosecutor who from the beginning had no case?

Trumpbour wrote on his website October 4, 2007, after Brodhead’s apology:

²⁹ See the following website: <http://friendsofdukeuniversity.blogspot.com/2007/10/too-little-too-late.html>

³⁰ “Duke President Shares Lessons Learned, Regrets About Lacrosse Case,” Duke University News, September 29, 2007: http://news.duke.edu/2007/09/rhb_lawconf.html

What President Brodhead really needs to take responsibly for and has yet to do so are the selfish motives that drove the administration's policies. The administration wanted the case to go to trial. It believed that, if the case were dismissed before trial for whatever reason, people would say that Duke used its influence to have it dismissed. Robert Steel, the Chairman of the Board of Trustees told me that a year ago. That is also why President Brodhead, despite being savagely maligned for doing so, clung to the concept of Reade, Collin and David "proving themselves innocent." That was not just an isolated, unfortunate choice of words. President Brodhead repeated this formulation only a few days ago. Dismissal is the proper procedure in the case of weak or baseless charges. Indeed, prosecutors have an affirmative legal and ethical duty to dismiss such charges where they are not based on probable cause or where they do not themselves believe in the guilt of the accused. However, the administration pretended not to know anything about these concepts.

If Reade, Collin and David had to be exposed to the risks associated with a trial by a corrupt, unethical prosecutor who had done everything he could to inflame the jury pool, that was just the way it had to be. Steel told me that it did not matter if they were convicted because all the problems with the case would be sorted out on appeal. That is not the way the appeal process works and I told him that, but that was still his plan.

The most disturbing outgrowth of this policy was that the administration not only did not want to speak up itself. It did not want anyone else doing so either. Administration officials would privately bad mouth the players to reporters and anyone else who expressed doubts about the charges or the fairness of the procedures used. I know. I heard this garbage myself. They were still doing it after the Attorney General's report came out to justify their actions.³¹

Indeed, in reading this, one gains the sense that Duke's leadership failed to recognize the damage it might do to itself by participating or encouraging false accusations against its own students. Clearly, Brodhead was horrified that some of the players had made racist statements to Kim Roberts before she drove away, although even Roberts herself admitted on "60 Minutes" that she had started the insult exchanges, and that no player

³¹ Friends of Duke University, Op. Cit.

had made any racial slurs before then. Nonetheless, the leadership misread the situation or failed to realize what might happen if the charges were not true.

We believe there is another explanation as to why the Duke administration responded the way it did to the lacrosse crisis, and that has to do with the establishment of the “Duke brand,” as it is called. As noted in Section 2, brand name protection is very important for organizations, and Duke is no exception.

However, for more than a decade, Duke had been changing its “brand” from a more traditional southern university to one with a faculty dominated by “hard-left” politics. Johnson and Taylor write:

...Duke sought to join the Ivies, Stanford, and MIT among the nation’s leading academic institutions. It chose to do so, however, on the cheap: bypassing the sciences (where the combination of salary and lab costs for a new hire ran around \$400,000), the school focused on bringing in big-name humanities professors, for whom the only start-up cost was salary. Politically correct leftists professors were in vogue nationwide, and the leftward slant of Duke’s humanities and social sciences faculty accelerated in 1995, when President Nannerl Overholser “Nan” Keohane named History professor William Chafe as her new dean of faculty. As he explained in a 2002 “State of Arts and Sciences Address,” Chafe focused on using new faculty hires to eliminate the “tendency to think of Duke as a place of wealth, whiteness, and privilege.” Diversity, rather than traditional conceptions of academic excellence, would be the prime criterion in choosing new professors for Duke. (p. 7)

Moreover, as Johnson and Taylor point out, the lacrosse team tended to be in the sights of many of these new hires (who would provide the bulk of signatures to the April 6 *Chronicle* advertisement):

Meanwhile, the men’s lacrosse team was seen as symbolic of a way of life despised by many left-leaning Duke professors and administrators and a much smaller group of students. This resentment was fed by the preexisting stereotype – up and down the East Coast – of lacrosse players as a privileged, conceited, drunken, boorish, even thuggish mix of rich-kid entitlement and big-jock swagger. (p. 8)

Furthermore, hard-left professors at Harvard University had succeeded in driving out Lawrence Summers as Harvard's president earlier that year, and one cannot help but wonder if Brodhead believed that angry faculty members could do the same to him if he did not placate them during the lacrosse crisis. What *is* clear is that three of the faculty members that signed the *Chronicle* advertisement received promotions afterward, all three becoming deans, so taking the side they did certainly did not damage their careers at Duke or elsewhere. (Baker later took a position at Vanderbilt University, where a news release declared him to be "one of the most wide-ranging intellectuals in America."³² Grant Farred, who accused Duke students of harboring "secret racism" because they were registering to vote in order to vote against Nifong in the recall election, took a tenured position in 2007 with Cornell University [Johnson and Taylor]. Others involved in the public condemnation of the lacrosse players also have been rewarded after the fact.³³

Indeed, as ad signee Wahneema Lubiano would declare, Crystal Mangum was a "perfect victim" and the lacrosse players were "perfect offenders," given that they were "the exemplars of the upper end of the class hierarchy, the politically dominant race and ethnicity, the dominant gender, the dominant sexuality and the dominant social group on campus" (Johnson and Taylor, p. 145). Lubiano further declared that she and other faculty members intended to use the incident to transform Duke "regardless of the 'truth' established in whatever period of time about the incident at the house on N. Buchanan Blvd.," and "whatever happens with the court case" (Johnson and Taylor, pp. 145-146).

The lacrosse case certainly served as a convenient vehicle by which to push an agenda, and these members of Duke's faculty and they made full use of the opportunity. Allen (2007) writes:

Mike Nifong's handling of the case was clearly outrageous. But he would probably not have gone so far, indeed would not have dared to go so far, had he not been egged on by two other groups that rushed just as quickly to judge the three accused young men guilty of gross and racially motivated carnal violence. Despite the

³² See "Five Prominent African-American literature scholars to Vanderbilt," May 25, 2006: <http://sitemason.vanderbilt.edu/news/digest/2006/05/25/five-prominent-african-american-literature-scholars-to-move-to-vanderbilt-hortense-spillers-houston-baker-among-new-hires.58991>

³³ See "Rewarding Dubious Behavior," K.C. Johnson, Durham-in-Wonderland, April 7, 2007: <http://durhamwonderland.blogspot.com/2007/04/rewarding-dubious-behavior.html>

repeated attempts by the three to clear themselves, a substantial and vocal percentage--about one-fifth--of the Duke University arts and sciences faculty and nearly all of the mainstream print media in America quickly organized themselves into a hanging party. Throughout the spring of 2006 and indeed well into the late summer, Nifong had the nearly unanimous backing of this country's (and especially Duke's) intellectual elite as he explored his lurid theories of sexual predation and racist stonewalling.

Allen continues:

"The faculty enabled Nifong," (Duke chemistry professor Steven) Baldwin said in an interview. "He could say, 'Here's a significant portion of the arts and sciences faculty who feel this way, so I can go after these kids because these faculty agree with me.' It was a mutual attitude."

Indeed, it was the Duke faculty that could be said to have cooked up the ambient language that came to clothe virtually all media descriptions of the assault case – that boilerplate about "race, gender, and class" (or maybe "race, gender, sexuality, and class") and "privileged white males" that you could not read a news story about the assault case without encountering, whether in the *New York Times*, the *Washington Post*, or *Newsweek* for example. The journalists channeled the academics.

The faculty response also created a huge public relations problem for Duke, and the university's leadership decided to protect those faculty members who spoke against the lacrosse team, as opposed to supporting the players, despite the fact that James Coleman already had spoken out about Nifong's abuse of legal procedures. Duke had invested much in these professors and decided to protect its investment, even if it meant placing itself at risk for future lawsuits by the players and their families. Trumpbour writes:

Duke was anticipating lawsuits from the very beginning. Remember Mark Simeon, Nifong's political ally, was lining up the Mangum family for a suit and brought Willie Gary to town in furtherance of that goal. If you will recall, Duke's site initially linked media accounts that were mostly negative toward the players and ignored accounts critical of the investigation. As the tide started to turn, and Duke's own misconduct became apparent, Duke began to anticipate suits from the players, instead.

In fall of 2006, Bob Steel made an offer to at least one of the families to pay their legal expenses in exchange for signing an agreement not to sue. Despite the desperation of their situation, they refused. Bob Steel and Richard Brodhead also had a meeting with the families to try and sort out their differences that went nowhere. Duke has known that the present suits were coming for a long time and the twisted apologetics contained on its own informational site were created with that prospect in mind. This strategy reminds me of the famous advice a rugby manager gave to his players before a game: “Be sure and get your retaliation in first!”³⁴

At this time, the lawsuits still are in the preliminary stages and the federal judge overseeing the lawsuits has made no major rulings. Thus, it is difficult to gauge the negative effects this case might have had upon Duke University. It is one thing to measure the damage of the Tylenol Scare upon the stock prices of Johnson & Johnson; it is quite another to gain data from a private university that could support or reject a hypothesis that the lacrosse case did real damage to the university over all.

Certainly, the ordeal has been costly. Although the numbers are under seal and the parties bound to silence, nonetheless it is “rumored” that the settlement with the three players went well into eight figures. One of the extraordinary parts of that settlement was a clause in which the families promised not to sue any Duke faculty members for the role they played in encouraging what was little more than a lynch mob. So, even to the end, Duke decided to protect its loudest faculty members at great cost to the university, especially since they had become, in effect, the new “Duke brand.” Furthermore, according to public filings, Duke claims that its legal costs in the case since late 2007 have been about five million dollars.³⁵

However, it can be said forthrightly that the choices made by Duke’s leadership, if nothing else, have cost the university millions of dollars at a time when the economy has not done well. Certainly, these are losses we believe could have been avoided had the university sought to stay away from “It’s not about the truth” strategy. As the mother of one of the players suing Duke said to one of the authors, “What we wanted all along was just the truth. Duke never would tell us the truth.”

³⁴ “Duke’s Motion,” Jason Trumbour, Friends of Duke University, March 4, 2008: http://friendsofdukeuniversity.blogspot.com/2008_03_01_archive.html

³⁵ See “Duke’s \$5M Defense?” K.C. Johnson, Durham-in-Wonderland, January 19, 2009: <http://durhamwonderland.blogspot.com/2009/01/dukes-5m-defense.html>

5. Conclusion

This paper examines the actions that the Duke University administration took during the lacrosse crisis of 2006 and 2007. We apply a number of models and insights on crisis management and evaluate the administration from that point of view.

Although this was a most difficult situation, and crisis management in higher education is different than it would be in a for-profit business, nonetheless there are certain principles that hold no matter what kind of organization might be in crisis. As we look at how Johnson & Johnson responded to the Tylenol murders, we find two interesting things. The first is that the company's leadership sought the facts as quickly as possible and then made extraordinary efforts to relay that information to the public in order to squelch any rumors that might arise.

Second, the company stayed true to its motto. In fact, the motto became the polestar for those company principals trying to deal with a crisis that was not of their making, but one that was directly affecting their lives.

Duke University also has a motto, "Eruditio et Religio," which means "Sanctified Knowledge." However, the motto apparently guided no one at Duke during the lacrosse crisis. Furthermore, the university also has a "mission statement,"³⁶ which reads in part:

By pursuing these objectives (laid out in the statement) with vision and integrity, Duke University seeks to engage the mind, elevate the spirit, and stimulate the best effort of all who are associated with the University; to contribute in diverse ways to the local community, the state, the nation and the world; and to attain and maintain a place of real leadership in all that we do.

Obviously, it is hard to square the actions of the university's administration during the lacrosse crisis with that "mission statement," not to mention the actions many of Duke's faculty members. One thing is certain, however; the "Duke brand" that the university's leadership sought to protect has come at a very, very high price. James Burke is seen as a CEO whose decisive and open actions in a time of crisis cemented his reputation as a strong and honest leader. One doubts that Richard Brodhead and Robert Steel will receive the same accolades.

³⁶ Duke University Mission Statement: <http://trustees.duke.edu/governing/mission.php>

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