

## LIVING THROUGH LACROSSE

CHEMERINSKY: Going to focus on here directly is how the media did handle the lacrosse case, what we can learn from it, how the various participants in the drama reacted including what they might do differently in hindsight. Let me start by introducing you to the very distinguished panel, and I'll start the person who is immediately next to me.

John Burness is the Senior Vice President for Public Affairs and Government Relations at Duke University. Next to him is James Coleman, my colleague, a Professor of the Practice here at Duke University. Next to him is Latisha Faulks, an Assistant Professor of Law at North Carolina Central University School of Law. Next to her is Paul Haagen, also my colleague, Professor of Law at Duke and he was the President of the Academic Senate is the proper title. Chairman of the Academic Senate at Duke at the time that this was happening. Sergio Quintana is a General Assignment Reporter at WNCN television in Raleigh. And finally at the end is Emily Rotberg. She's an intern now at Financial Times, London, Managing Editor of *Towerview* Magazine 2006-2007. She was a Staff Member of the Duke Chronicle, and a member of the Duke University Class of

2007.

What I'd like to do to start our conversation is ask each of the panelists talk about what role he or she played during the time of the controversy over the lacrosse players, and in hindsight what would you do differently? If it all was playing out starting tomorrow, what choice would you make now that were different than the ones that you did then?

I think the easiest way to do this is to ask each of the panelists to speak for a few minutes beginning with John.

BURNESS: Thank you, Dean Chemerinsky.

CHEMERINSKY: Thank you. That's a whole different media story.

BURNESS: No. No. Wait. I was going to say one gets associated with crisis management in very interesting ways. Well, in my role as Senior Vice President here, I was sort of, I wasn't sort of, I was the chief spokesperson for the university when the President wasn't speaking to it. And I must have done a couple of hundred interviews over the first three months of the case and then maybe 100 since then.

I'd like to try to put it in perspective in one way, which is to understand the degree of media frenzy that was

building around this case, which made it so difficult to try to manage our way through. In the month of February 2006, which was a month prior to the so-called incident, there were something like 3,400 stories about Duke in the national and international media. A quick scan of those would show that 95 percent of those were actually very positive about the institution. In the month of March, which is when the story broke, there were something like 7,300 stories. And in the month of April there were 33,000. We were the biggest story in the country over a five or six week period 24/7 all the time. And one of the things that makes this story so in some ways interesting and different is even as recent as June of this year there were 24,000 stories about it.

The intensity and duration of this story is in my experience unprecedented. I don't know of any university that's had to deal with anything like it and I certainly don't know any corporation that's had to deal with anything like it. And the closest I can come up with is the Clinton/Lewinski scandal.

So that framed a lot of it. And there was, as we were dealing with it in the earliest days, it almost didn't

matter what we said or what we did. I know Richard Sevick, is he still here? Was on the prior panel, we were able to get out some statements and I'll talk to those at different times during this panel. But the media had rushed to stereotype so fast in this case, and it is a case that was a perfect PR storm. It combined race, sex, class, privilege, the South, the history, and also from my perspective trying to manage through this, the variable that made this story so powerful in the end was Duke University, which had been on a pedestal as an institution for handling academics and athletics right. And when you're on a pedestal, you can only fall off.

And I say the reason I think that is so important is I've actually had a student not long ago go back and over the last two years identify any stories we could find through the Google process that involve alleged rapes or sexual offenses or murders involving athletes at college campuses and others, and the stack was about that thick, a half inch thick. And I dare to say most people in this room couldn't mention one of those places. So for me the variable that took it to where it went was there.

The one humorous thing I will say, because it's not a funny

topic, was in the midst of the earliest days I had a call from a Duke alum who used to work for Vice President Chaney and he said is there anything I can do to help and I said it would help greatly if you could get your former boss to go hunting again.

There was nothing that would knock this story off the front pages, more importantly off the 24/7 cable news shows where everyday it was breaking news in the Duke Lacrosse story, there being no breaking news. And these people that for me seem to come out from under some rocks to become instant experts on everything that was going on. We can go through a variety of different aspects of how we had to handle it. I would say if we had to do it again other than in a personal sense retiring two years ago before all of this happened.

I think there are a couple of things. First of all we did not anticipate the degree to which the frenzy would overpower the messages we were trying to convey. And we were trying to get our messages out. I think our language was very precise, very careful, because we didn't have facts and we didn't want to speak to anything we couldn't speak to. And frankly I don't think universities in general

are used to what a corporation would do, which is when your brand is at stake as much as it was in this case, investing a whole lot of money to try to deal with that. So I would say that is number one.

The other thing we did not anticipate, because I'm not sure I had seen it before or any of us had, was the interrelationship and the synergy between the world of the blog and the world of the press. And at points where the press was quieting down, the blog world was coming up, in fact, creating more information for the press that the press themselves should've been getting, but in some cases sort of fanning the flames and heightening a perception of the story that from our perspective was not particularly accurate. And then it became very hard to get in and deal with that.

So I will stop now with that and turn it over to Jim.

COLEMAN:

Well, let's see. What did I do? I was Chair of a committee that was appointed in early April to examine the disciplinary record of the lacrosse team in response to statements that had been made after this story broke about how the players, the members of the team, had accumulated a worrisome disciplinary record that had been out of control

and that the university had not addressed and that the kind of conduct that was alleged was something that could have been expected. So I was Chair of a committee along with -- that was made up of members of the faculty of Arts and Science, and we over a period of about three weeks we examined the facts to the extent that we could determine them relating to the team's conduct. We then wrote a report in which we set out the facts. We set out our conclusions, and we agreed as a committee that we would let our report speak for itself.

And on the day that it was released, the university arranged a press conference and I spoke for the committee. I spoke for the committee and basically I said this is our report and you should read it. And that frustrated the reporters, particularly the television people, but we thought it was important that people read the facts and if they disagree with our conclusions, that's fine, but at least make the disagreement be one about facts. We didn't want to characterize what we had found or why we had reached the conclusions. We let the report speak for itself.

The other thing that I did was to express concern from time

to time about what I saw as inappropriate conduct on the part of the prosecutor and unfairness on the part of the prosecutor, because of my concern that this is the kind of case that could result in innocent people being convicted. And if that had happened, and I think the public doesn't fully appreciate how easy it is for that to happen, but once it happens, it becomes very difficult to try to undo. And I think in this case if that had happened, I think it's very unlikely that these students ever would have been exonerated and possibly would've spent most of their productive lives in prison.

In terms of what I might have done different. One thing that I wish I had done, which involved a friend of mine on the faculty at Central who was also a person who spoke out about what was happening in this case, we were actually talking about the same concern, which was unfairness in the criminal justice system. His focus, however, was on the person who had made the allegations. My focus was on the impact that it was having on the students, the Duke students. I wish I had met with him and so that he and I could talk about our mutual concerns, because I don't think that we were really in opposite camps. Normally he and I appeared on panels together talked about these kinds of



issues. We were in agreement on these kinds of issues, and I think it might have made a difference also if he were also expressing some concerns about the impact that the unfairness was having on the defendants in addition to the concerns that he was raising about a rush to judgment on the accuser.

BURNESS: Latisha?

FAULKES: Well, I was in the unique position of having just interviewed at Central for a position in February before everything broke, and so I received a call from my mother saying have you heard what's going on in Durham. It's probably about to burn. The institution responded first by holding rallies of support for the accuser, encouraging the DA to move forward in a manner that the community thought was going to be appropriate.

Interestingly enough the law school was a much more reserved place when it came to responding. We did not have this rush to put out public statements about our perspectives and things like that, with the exception of my friend and colleague, Irv Joyner, through his work with the NAACP.

I think that part of the reason that Central as a

university was vocal was because of their concerns that the investigation just wouldn't go anywhere. Concerns that money were going to influence whether or not the prosecutor moved forward in any way, which is not to say that I am happy with the way the prosecutor did proceed. Like Professor Coleman, one of my concerns is always whether the information is going to be cultivated in a manner that's going to assure that innocent people are not convicted.

As to do things differently. I would hope that the university would've made better choices about how they showed support for the accuser. That is emotional support, institutional support, rather than rushing to the political stance that the university took. For me this was an individual who was suffering a personal crisis who needed support in that sense. To the extent that the university needed to have rallies and things of that nature, I'm not certain that that was in the accuser's best interest.

I also would've hoped that there would've been more communication between Central and between Duke as to some of their concerns. And I think that we have learned a lot from that since this event occurred. Certainly the law school communicates much more frequently with Duke Law

School than we did prior, and I would hope that Duke and North Carolina Central communicate much more than they did prior to this event.

These two institutions occupy this city and many people feel as though they're on two different sides of the universe. Much like some of our presidential candidates talk about two different countries, one rich and one poor. Duke and North Carolina Central are at a point now where they are able to bridge that gap and bridge that perception. And that's the one good thing that I think came from all of this at great expense to some very young people at the beginning of their lives.

CHEMERINSKY: Paul?

HAAGEN: I'm Paul Haagen. I'm on the faculty here and my role was that for my sins I was the Chair of the Academic Counsel during this time, and a member of the Ad Hoc Lacrosse Steering Committee. The President called me -- to be precise, I called the President and I said I've just seen in the press that a non-testimonial sweep order has been directed at the white players on the men's lacrosse team and I want you to reassure me that you're on top of this and then he said would you come to my house tomorrow, we're meeting.

The specific actions that we took in response to this matter once it became clear that there was a crisis, I called a emergency meeting of the faculty to which about 200 people came and it was clear that there was a level of interest and excitement that was greater than, I knew there would be a lot, it was greater than I anticipated.

And then I tried to come up with a strategy for the Academic Counsel to respond to these matters, and it basically operated on the series of a couple of principles. One is we had to stay out of the criminal case. There was no role that we could play. If we tried to play a role, we would be seen to be part of the rich institution pressuring the public authorities. We might end up being accused of an obstruction of justice, and that we really had no role to play.

The other was whatever we were going to do, we were going to follow our existing procedures and that meant most critically that there could be no individual discipline for the actions related to the party, because our practice was that we did not engage in social discipline except where there was a citation from public authorities if this were

an off campus event.

The strategy that I tried to implement was to see if it wasn't possible to create a common base of information for dealing with what in conversation kept being a shifting set of questions. Were these guys guilty of a criminal act? Had they engaged in a social violation for which Duke should have punished them? Was there a party that we ought to comment on, because it was particularly inappropriate? Did Duke have issues that were interfering with the education of students in a variety of ways? Did we have particular problems relating to gender and race on the campus?

And the first thing I did Dean Levi said when he was playing the role of the Chancellor of Excelsior University what would he do if got the word he would call Jim Coleman. That literally is what I did. I went to Jim and I said there are a lot of stories circulating about this team. I suspected that some of them were conflating fraternity brothers, the baseball team, things that had happened ten years ago, but I certainly didn't know. And I thought it was very important that we have a credible common basis for information. I knew he had done this kind of thing before. I asked him if he would do it if I could guarantee him that

I would back him to go wherever this went. He very graciously agreed. I went to the President and said I think this is important and he agreed and so we went forward with the Ad Hoc Lacrosse Steering Committee.

One thing I should've said, I tried wherever we could to fit it into our existing structure so this was a faculty committee that basically was a subcommittee of the Athletic Council and the only thing that we did given that this involved a rape allegation and we didn't have enough women who were not -- where there was not an issue, we brought women who had previously served on the Athletic Council onto the group.

The second thing I did was I got my Executive Committee to charge the Student Affairs Committee to look into what were our procedures related to off campus violations. Were they adequate? Were we following them in this particular case? Did they have recommendations for the way we should deal with these things in the future? I went to the President with this committee and he also once again said he thought it was a good idea. And it was one of the five committees that were announced.

The final concrete action we took when this started to happen, I went over to the Athletic Department and started to talk to a variety of the coaches trying to understand what their perceptions were, what they thought was going on, and it immediately became clear to me that they were quite isolated within the institution. That they didn't know many faculty, many faculty didn't know them. And so I proposed to my Executive Committee, my Executive Committee backed unanimously the creation of the Faculty Athletic Associates Program, which is now in effect and puts faculty on all of the athletic teams in an effort to increase communication.

Rhetorically what I tried to do was stay away from anything related to these particular kids, to talk about the things where I thought Duke could do something positive. It was said in the previous panel it's important to run to the light. I was trying to figure out how to do that and to have the principle be that Duke was a place where we looked at ourselves, tried to take these matters on, and, again, rhetorically one of the things I tried to do was suggest virtually every one of the problems that had been associated with Duke with this team was a general problem in the United States, not something specific to Duke. But

that I wanted to commit the council to have us take a lead in this particular matter.

And the final thing I tried to do was to see if we couldn't get through this in a way that promoted the maximum amount of collegiality so that there would not be an enormous amount of damage at the end.

What would I do differently? In preparation for this, I read everything that I had written, and I tried to find most of what other people had quoted me as saying. To give you a sense, John talked about the interviews. The very first week after this came out, I gave 50 hours of press interviews in a single week, which Craig Masback talked about it may have been absolute idiocy, but I was trying to see if I couldn't get this message out.

What would I do differently? Well, I'd be a whole lot more effective at communicating than I apparently was. I think I would be a little more sensitive to the fact that a lot of the language that I used which was designed to be particularly -- to make it possible for people not to be backed into corners, that was language they could come to. I think it simply wasn't understood. And when I went back



and read it, Casey Johnson is here, I read what he said I had said, and I didn't think that's what I had said, and so I went back and read it. I'm still quite convinced he's misread what I said, but what I understood a little better was that people completely out of this community might not have gotten a handle on it and that probably I needed to be a lot blunter and to risk a few more things about confronting people in the community.

QUINTANA: My name is Sergio Quintana. I'm a reporter at the NBC station that covers Raleigh and Durham and the whole Triangle area. I'm a general assignment reporter, so my role in this was to cover not the main case itself. The way our newsroom decided to organize itself into covering this story was that we assigned one person to cover the prosecutor aspect of this. My colleague, Carolyn Costello, took care of that. And then we had another reporter cover the perspective of the accuser. He had some really good contacts within the Durham community, so he was actually able to reach her family and to try to keep that side of the story.

As a general assignment reporter who didn't have those two main roles, I had to cover everything from rallies and demonstrations at North Carolina Central University to

situations here on Duke's campus to the perspective that this case had on lacrosse itself, because a lot of people actually hadn't heard about the sport, and so we were covering that part of it as well. I was at that house several times covering people who were banging pots and pans and making a big spectacle of the house as well. So I kind of had the periphery and the context to have to cover.

I mean also as a reporter in the newsroom I tried to have a voice in the way we were going to try to even present simple words and decide how we were going to... I remember there was a debate in the newsroom about the word exotic dancer versus stripper and how we were going to use that and how we should use that appropriately, and there was lots and lots of conversation in the newsroom about how we were going to have to do this.

One of the things that I found interesting as a local reporter, this is my turf and it was irritating at times for us that we had national media come in and they had access and we did not. That was one thing that was extremely frustrating. And it was to a few different things. Sometimes it was that they had access to Duke and we did not, and sometimes it was they had access to the

prosecutor and we did not. Sometimes we did, but my understanding as a local reporter was that I would've hoped that we had those relationships in place so that we wouldn't have had to have been leaning on NBC news to get an interview that we know had been conducted.

There was a time where I was staking out a hotel, because I was keeping an eye on Rita Crosby's producer, because she had an interview that we were like well, why the heck are they talking to her. We're the ones who are here.

It was interesting, because this story took on this broader context that people from New York or from Los Angeles or from DC could say things, but we're the ones who kind of had to get the brunt of it. I mean, I can't tell you how many times I got things told to me well, the media, blah, blah, blah, blah, blah, blah, blah. I'm like "yeah, but I'm your local reporter who you can turn on the TV here on a nightly basis and you see me covering this story, but also what happened down the street because of some kid doing a good deed as well." We all got clunked into the same pot and for us as a local media organization, we were extremely, extremely aware that we had to provide a broad context that was extremely balanced and then try to

incorporate everyone's perspectives, because at the end of the day, or it turned out the end of the year, we still live here and we still have to cover everybody, and we still have to try to maintain that access. And so we were very cognizant of that, and we had lots of conversations in the newsroom about that.

And even in the way I would have to seek information, I had to be aware of that. I couldn't be combative about people who we thought at times were fashioning a message rather than speaking about what they think should be done, because we still had to talk to you guys later on and hopefully be invited to panels to give you our perspective.

If I were to do anything different, I think, and I mean, I don't really like to pat ourselves on the back all that often, but I actually think that we did a pretty good job of providing context and to try to get as much balance and perspective in the story. And anyone who had something to say, we made sure that we went out and we tried to get it, but then also try to make sure that it was balanced against something else that someone else was saying, so we had -- and this was one of those stories that you couldn't balance, because it wasn't two sides. It was like a hydra.

You had to get so many different things and then cram them into a story that made sense.

If I were to try to do anything different, I think I would have probably spent even more time than we did on the campus and try to have conversations with people away from the camera. It was interesting, because this story was -- let me say that before covering the story, I had been in the Triangle area for a total of about four or five months, so I didn't come to this story with any preconceived notions about the way Duke behaves or NC Central behaves or Durham or -- I didn't have that. I just didn't know. I was right, great, beautiful campus. But I was aware that people on campus and off campus would tell you certain things very easily and very calmly and succinctly, and they had their guard down and they would tell you what they were thinking and what they were feeling, but once you had a camera running, they wouldn't. And so we lost that, I mean, as a reporter I didn't have a really great way of putting that into context.

There was some people who were ticked off beyond all means at these guys. Some of them thought that these guys were thrown to the wolves by the university, and I think that

was a fair perspective for some of their fellow students to have, but they didn't want to say anything on camera, because they thought they were going to get into trouble. So we had to sometimes get shots of people writing things in their windows in their dorms or wearing t-shirts or doing things to show their support for these fellow students whom they had these great perspectives on, but they wouldn't talk to us, and that was really hard. And I think that as a reporter I would've spent more time trying to build better relationships with not just those students, but everybody else who had things to say but were afraid that they were going to get pulled into the or get into trouble or get some sort of repercussions against them.

ROTBERG: Wow, last one to speak. Great. I was a member of the Chronicle's reporting team on the lacrosse story. I covered aspects of the story ranging from protests on campus to a press conference in Creedmore at which it emerged that the accuser had launched very similar allegations a decade earlier. I also interviewed some of the accuser's colleagues at a Durham strip club. As you can see, we were all over this story at the Chronicle. And as you can imagine, it was a fascinating time to be a college journalist. A bit more exciting maybe than covering a campus council meeting. True.

We were also by virtue of being students and living at the university closer than any of the more powerful national media sources who were also pursuing this story. And at the same time we were students first. It did become incredibly difficult to balance spending hours trying to speak with Mike Nifong with the reality that exams were around the corner. And I do continue to be incredibly proud that a group of volunteer journalists whose full time job was to be students were able to publish such responsible quality journalism.

And, again, it was a very interesting position to be students at Duke and therefore, part of the story and also covering it. And I have to say, Sergio, I do share your frustration that the national media had so much access that they kind of co-opted the narrative and then fled back to New York or LA when we had the difficulty of living with our sources and knowing things that we couldn't publish, because it came from friendly conversations over a drink. That kind of thing.

It is still unbelievable to me how much access the mainstream media initially had to our campus. I remember

one night sitting in the Chronicle office waiting for the evening news to come on, because our then editor, Seyward Darby, was going to be a guest and you could tell it was early. We were still excited about that kind of thing. The opening music started and somebody said hey, guys, come over here. We went over to the window and saw a row of spotlights on the quad with reporters ready to do stand ups right outside to lead off the evening news.

Another day I stood and I watched a reporter read my front page story, put down the paper, say ready, and then give a live broadcast saying everything that I had worked the day before to discover. And maybe a little miffed, but actually pretty proud that our work was deemed worthy of being plagiarized.

CHEMERINSKY: I'll talk about that later.

ROTBURG: All right. Sections of parking lots were roped off and reserved for broadcast trucks. Students on their way to class were basically chased by reporters. I have to say the way that I got some people to talk to me was by first listening to their frustrations at being approached with the lead in of how do you feel as a black woman on this campus. Because instead I would go up to them and say "what did they just ask you. Why do you look so angry right now?"



And they would tell me about that. So we also ended up not just trying to cover the story, but covering the media that was covering the story and how they were treating Duke students.

So of all the people sitting here, I would have had the least influence to change anything that I did. I do think that the Chronicle was very consistent with vocabulary, including choices referring to the students who were accused as students and not these men or our boys, and referring to the accuser consistently as an exotic dancer rather than a stripper. And I do think that our conscientious layers of editorial oversight were very important.

That said, I think that we were also, just like everyone, we were steamrolled by this thing. We had reporters from The New York Times and Vanity Fair and yes, Rolling Stone, in the Chronicle office interviewing student reporters about their experience, and I think that limiting access to student reporters and protecting us, protecting ourselves, would've been wise.

But personally I can't imagine how I would've done anything

differently, except to maybe trying to string for a national media outlet. But honestly, even that if it meant that I couldn't cover the story for the Chronicle probably would not have been attractive. If you think about it, we were the only paper whose ability to adequately cover this story was compromised by our reporters having to go to class. It was a heroic effort. I'm incredibly proud of all the work that everyone did, and I'm very grateful to be on this panel today.

CHEMERINSKY: I asked each of you to appraise your own role. I like to now ask each of you to appraise how others performed. Let me set aside here Mike Nifong, the prosecutor. Obviously we could spend the entire panel talking about his misconduct, his misconduct in terms of the statements he made in the media, his misconduct in terms of the way he held lineup, his misconduct in terms of suppressing evidence, his misconduct in terms of lying to The Court, but putting aside... Obviously that statement reflects my own view that this was a case about egregious prosecutorial misconduct, and I don't think we need to focus on that in this panel.

Instead what I'd like you to do is to talk about the performance of others, the performance of the Duke administration with regard to this, the performance of the

Duke faculty, the performance of the defense counsel, the performance of the media, and the media is of course not homogenous. I mean, there are the national newspapers, there's the local medias we've seen, there's the blogs. How would you appraise the performance of some or all of these a part from the group that you're in and what do you think they should've done differently? And, again, I'm going to ask you to each talk a few minutes.

BURNESS: Do you want to start here?

CHEMERINSKY: Yeah.

BURNESS: Well, I'll start with the media. This was not the media's finest hour. And I think that all of the fractures in the foundation and sort of the values of where the media are in American society they came through with this case. In the sense that in a 24/7 news environment with the advent of the electronic instant communication world the media in this case just went straight to stereotype. Everything was stereotyped from the start. I could make a plausible argument even today things are being stereotyped as part of how all of this was handled.

And interestingly, Sergio, when we were sitting there thinking of dealing with the nationals versus the locals, we were really conscious of giving the locals the access

more than we were giving the nationals the access. Partly because we believed that you folks understood this community a whole lot better. The portrayal of Duke as exclusively a rich, white, privileged institution in Durham as one local person told me as Soweto was what we were dealing with. I mean, this was so far out of whack. And we were then trying to get the media to understand the power of how these descriptions were shaping this story, and it was very, very hard to do.

I think in the early days the media performed particularly weakly. They could not step back. The inability to use the word allegation or the alleged rape or whatever else in various reports that were done. Some of the columns in the best newspapers in this country were egregious in their errors. I think with The New York Times we requested ten corrections in a ten day period. We got five. We should've gotten ten.

And as the story evolved over time, I think the lawyers for the students did a absolutely superb job of figuring out how to get their message across to the media, and that then got the media finally to begin to look at this case and focus more on the Nifong aspect of it.

But I also believe that one of the reasons the media went the way they did early was a tactical error that occurred on the part of the folks representing the kids, the three students. And that is first of all when the 46 were called downtown, they were advised for the perp walk to put their sweatshirts over their heads and cover their faces and whatever else, and the physical symbol of that is that's what you expect in the Sopranos, you don't expect that in this kind of case.

And then the second thing is, and I think I now understand why this happened, that as they were trying to figure out what this case was really all about and what had happened and therefore, no one was speaking for four or five days on behalf of the students, that vacuum was filled by the police and by the DA with the statements with absolute certainty that a horrific gang rape had occurred in this place. And that's what the press had to deal with. And rather than question it or step back a little bit recognizing it was coming that way and asking the questions, they fell to the stereotypes in their reporting. So I'm pretty critical of the media's coverage of this.

I'm also very conscious of where, again, I think we could've done a better job. We were explicit in our statements. If you read the very first statement that came out, it was from me, it said our students were cooperating in the investigation. At the time the police were saying our students were not cooperating in the investigation. In President Brodhead's first statement he said there are differing versions of these events. No one else had said that up until that point. And that you needed to presume in our country that you're innocent until proven otherwise. And the way you get to the truth ultimately is through the legal process. Now, we all understood what then happened relying on the legal process.

But we weren't as effective in taking the messages we had. We put together frankly I think a terrific website that listed every single speech, it had articles that were critical of us, articles that were praising us, whatever else so people could get a context, but it was too passive. It was sitting there and people wouldn't go to it. And meanwhile those who were playing the story were pushing the information out with the assistance of the media, and we were nowhere near as effective as we should've been in terms of dealing with that aspect of it. Jim?

COLEMAN:

Well, I think there were a lot of people who I think performed in an admirable way and there were some people whose performance, whose conduct was disappointing. I think overall what I would say is one of my sort of principle disappointments is that a lot of the people who were in a position to influence both how the public looked at what was going on and who were in a position to influence what the public took away as the lesson of this case failed us I think in large part.

Particularly if you look now at what's going on. I mean, what's going on now is that people are looking around for folks to blame, they're looking around for they want revenge, that people are angry, people are angry at the 88 members of the faculty who signed that letter as if they were a group, as if they functioned as a group. My guess is that a lot of them probably didn't carefully read what they had signed. Not that that would've made a difference, but I think that they were showing support out of a different kind of concern, not necessarily inconsistent with concern for the students.

I think this is a case that could've been a bridge. Instead I think it became and it looks like it's becoming even more

of a wall. The notion that there's a great deal of anger both on -- and it's interesting. It doesn't appear to be reflected in what the students who were accused and who they were the ones who really suffered through this. They came out of it surprisingly calm about the whole thing and reflective and mature. A lot of their supporters, however, came out of it very angry.

And it's sort of interesting that you take the anger that develops from one case and the people who are in that position don't appreciate the anger of people who have suffered these kinds of things for years and years in thousands and thousands of cases, and there's no understanding. And that's too bad, because I think that this really is one of those cases that could've made all of us better, and instead it sort of caused us to kind of go back into our camps.

People say, well, my performance was heroic in this case. That's not true at all. I mean, I just simply was doing what I do everyday when I see cases like this. The difference was that people were paying attention. People who in the past did not pay attention paid attention in this case. And I think that's, you know, if we go back to



the past I think that would be ever unfortunate.

FAULKES: From my perspective, my first surprise was that the immediate advice to the students in question was not get a lawyer. I've always had some dismay that there was the idea that this could be handled individually, that it could be handled internally, or that the students didn't have to take that next step. Of course, I have also done criminal defense work and it helps for business if my first caution is get a lawyer.

I'm also surprised not so much by the media's failure but by the failure of institutions, both Duke and North Carolina Central, perhaps other community organizations in using this instance as an opportunity to discuss sexual violence against women, as an opportunity to discuss some of the problems and concerns that historically occur when we deal with athletic programs at university systems and women and their ability to represent themselves or to support themselves as they see fit.

I saw very little of that in an educational environment that should have been talking about sexual violence some of the controversy about sports and the link to sexual violence or lack thereof. And I certainly think that the

media had an opportunity that they didn't necessarily take advantage of to get the perspective of some professionals who were doing top line work at Central in addition to the people that they were encountering here at Duke.

I had one colleague who came and spoke with me candidly, and she said that when the story first broke, she contacted every news outlet that she could conceive of so that she would have an opportunity to give some discussion about the under reporting of rape at universities, about the prevalence of date rape and things like that, and she had no takers. None. And it was a comment that stunned me into silence, and one of the first things I thought was why wasn't this taken as an opportunity by the universities, by communities, by families who have women who are going to go out into the world, by families who have sons who are going to be athletes. This is the beginning of something very serious, and the institutions didn't take advantage to use it as a teaching mechanism.

And I also thought that there were some serious problems with failure to identify that the misconduct of the DA is not as much of an aberration as many people believe. From the wrongful conviction perspective our thoughts and

theories are that often when you see wrongful conviction, the issue is that the prosecutor has rushed to judgment that the investigators have rushed to judgment. And indeed we had an exoneration soon after all of this was finished.

One of the great things that I think Duke has done in moving forward as a lesson from this is their wrongful conviction efforts and really investing in that. Jim mentioned that he doesn't think that these boys ever would've gotten out from under this conviction if it had moved forward. And that's one of the greatest fears that I have that we're going to lose in this experience and this lesson. But for the fact that they were able to get this stopped at the investigation stage, we've made no changes fundamentally to how we check to make sure that the prosecutor isn't overreaching. To make sure that the accuser isn't in some respects not giving a story that leads to criminal culpability. And I'm still very dismayed that we haven't moved forward as far as policy in that regard.

HAAGEN: I want to start out with something that I think is an issue that has regularly come up. You mentioned that the students were advised not to get a lawyer. I think that's highly disputed. I know that that allegation has been made. I'm

sorry. I know that the allegation has been made that they were told that, but at least one of the people says "no, I never said anything like that." And I think part of the reason I want to raise that is that one of the problems that was constantly coming up in this case is that people would know things that were disputed, that were uncertain, and it was very, very hard when you're trying to have a discussion with someone who thinks you're prevaricating because you actually have different information. And I actually don't know what was done, but I know it was in dispute.

And I also I actually thought Duke was pretty extraordinary in using this as an opportunity for reflection on a number of things. I don't know that the reflections led to as much as I would've hoped. I'm not sure that the discussions were as productive as they could've been, but that there was an effort to do it and to try to turn the crisis into that. I actually believe it is one of the things that was done relatively well.

Now, another one. This is going to seem very counterintuitive to the group. This is a place where eventually a lot of things went well. The State Bar

Disciplinary Committees have not been notably effective. They have let an amazing amount of stuff go without taking things seriously. This is a place where you saw them take something seriously. This is a place where you saw action.

Now, have we moved to the stage of dealing with the systemic problem? I absolutely agree with you that we haven't and that one of the problems of the rhetorical conflict was the failure of a variety of groups of people to realize that they should be making common cause here that they had, in fact, a lot of the same interests.

Now, there are a couple of people in this group who I think really did behave well. The Duke coaches were really fairly remarkable in the face of this. These were people who really felt quite assaulted and I think that they basically kept their own interests, concerns, sublimated to a variety of larger goals, and I was pretty impressed with their self-restraint. And could they have done more on a variety of other issues? Sure, probably. But I actually thought their performance was pretty good.

What do I think the really tough matter here? When you've got an opportunity that raises your issues, when you can

see that someone who has not been paying attention to you is weak, how aggressively should you exploit that? What are your other responsibilities? And I actually don't have a very good answer to that. But I think my deepest concern was that a number of people didn't ask very seriously what the tradeoffs were when they used an opportunity to push an issue. And this is a lot of people across a big range of matters, people who were concerned about all kinds of things at the university. And so I don't think that answered your question.

CHEMERINSKY: Thank you. It did.

QUINTANA: It's interesting for a large part of this thing that we call Duke Lacrosse I actually think that the university brought nice language and high thought to a knife fight, which didn't serve them well a lot of times. One of the things that I found was that there was, I mean, I've covered these stories quite a bit, and especially in this case in particular, this case is a case that was completely tried in the public. It was completely tried in the court of public opinion. Even to the AG deciding that this is not even a case. And it would not have happened had it not been for their attorneys who figured this out and who started feeding stuff to reporters to say look, he's lying, or look, he's inappropriate, look, that's not supposed to be

happening. They figured it out and they played it out well, and they understood that if you get your message out, you can probably even get your clients off completely. And they performed wonderfully.

The university was more fractured. The university was conscious of image rather than -- well, you guys were caught because you really didn't know what your position was. You guys didn't understand that the story was about these kids, but also it was about privilege getting its comeuppance. That's what the story was about. And it's not a very easy way to try to sum it up and figure out okay, wait. Our role as a university is to teach and to have a role in its community, and as such we need to push that forward.

You guys had some really great opportunities here, because you guys have an excellent law school with experts that could have helped the media understand why this guy was doing things that were inappropriate, but we didn't have access to any of those guys.

You guys have really well educated students in media who could have offered some of that perspective as well to let

us understand there was some really great opportunities to show how this affected the university as a whole, and it affected so many different layers from athletics to the image of the university to the students, themselves, who were concerned about how this was going to taint their education after they graduate. Not just the people who were accused, but also everyone else who now has a Duke University degree. And a lot of times there was not the ability of -- the university had a difficulty summing this all up. And there wasn't a face of the university who we had access to who could say that guy is lying. There wasn't, because once Nifong had these things to say or people had these things to say about the university and how they're this privileged group who thinks that they're better than everybody else, well, there wasn't anybody that we could go to who we knew would debunk that or give us some perspective or let us understand how things work here at the university.

NC Central they were in a different position and so they were a little bit freer to have more access and their students expressed what their frustrations were because they didn't have as much at stake, because they were not the ones who were up on the pedestal getting ready to get



knocked off. So they had freer ability to have speech and demonstration.

I think the way they handled things was interesting. I mean, in fact, Mr. Joyner was one of our experts who we turned to for some sort of legal expertise, so that was great. We had access to someone who could lead us through this and who could understand well, this is what the procedure is and this is what it's not.

Again, I mentioned the students' attorneys, they performed brilliantly. If we needed something, we called them, they had it. And they understood that it's important to have a talking head. And we make fun of it all the time in the media, but you've got layers of media. You've got the bloggers who are going to be writing whatever the heck they want really, and you have journalists who are trying to write these things into context and that's student publications, which by the way, Chronicle did a really good job, and yes, we did read you guys, and no, I was not one of those reporters.

CHEMERINSKY: I think I'm going to interrupt here so I can be sure that Emily gets a chance and then we get one minute to conclude if that's okay.

QUINTANA: Quick conclusion here. I think that the students' attorneys did a really, really good job. And, of course, Nifong for whatever he was doing, he did a really good job in putting his perspective out as well, and it ended up hanging him.

CHEMERINSKY: Emily.

ROTBURG: I'll try to be quick. It was always my opinion that university leaders conducted themselves with dignity and respect for the process, and that any failure or any perceived failure of communication had to do with restraint, and quite frankly, bewilderment. Anyone that criticizes administrators' conduct I think is ignoring the context of complete confusion in which all of these events were taking place.

The fact is -- well, in a high school drama class that I took, we were doing a screen play unit and the teacher said any plot needs to be possible but improbable, and the fact is the alleged acts were improbably, but unfortunately not impossible seeming. And it was chilling to imagine that there was any chance that anything along those lines had occurred, especially when you introduced a very vocal DA.

I'm sorry to bring this up, I have to though. Early on we decided that everyone covering the case should be assigned

to cultivate relationships with different people, and I was on the Nifong beat. I ended up having one of the last interviews with him, a half hour long interview in his office, in which he said that the players were denying what had happened, because they didn't want to admit to the enormity of what they had done. He said within a few breaths that he didn't know why anyone who didn't have anything to be afraid of would need a lawyer, and that this was a crime more serious than second degree murder. And I think that this very -- it was a complete departure from everything that we were raised to believe in to actually make the leap and accept maybe that this guy was looking out for somebody other than the public, himself.

And then the media also just sunk their claws in -- the media are not monolithic, but certainly some of the national sources were more gleeful in attacking the university than others. And it seemed to me especially in hindsight that almost any university's name could've replaced Duke's in a lot of the stories, especially those written about the character of the students and their drinking habits. Surprise, college kids go to bars. And it seemed that there was so much that went wrong here, but it was because nobody knew the script. Everybody was trying to

muddle through and do the best that they could.

CHEMERINSKY: That's wonderful. We have exactly six minutes and six panelists. What I'd ask each of you to do is take a minute, and I apologize, I'm going to cut you off after the minute so that we can get to President Brodhead, and what I'd like you to do is a minute of final thoughts. What lessons in a minute would you draw from all of this? Emily, since you've gone last, do you want to go first or last? Your choice.

ROTBURG: You start.

CHEMERINSKY: John, you get to get to first again then.

BURNESS: Why does she get to choose and I don't? I think this a very sexist thing to hear this happening in a law school is particularly disconcerting.

CHEMERINSKY: Because she just spoke and I didn't know if she wanted to speak again.

BURNESS: You like the rationales here, okay. We'll take this... I do think the lacrosse case sort of opens an interesting lens on what's going on in American society. The fact that we saw such rush to judgment, such stereotyping in this case, it says a lot about the media. It says a lot about our own culture. And the way we process information, the way we get our information these days, and the willingness that seems to be out there to accept something just because it's put out.

Now, in a case where you have a District Attorney doing -- behaving the way he did in this, which I don't -- I buy what Jim is saying, this is not unprecedented, certainly, but I think the visibility of it is unprecedented, and there are a lot of reasons why people listened when he said what he said, because of the authority that we give to the legal system to handle this kind of an issue. So for me it's really an opportunity to sort of step back and think about everything from our own legal system and what this says about it to how the media operates to the relationships universities have with partners, whether it's their communities, it's internal, and how do we take issues like this and turn them into educational moments. And that's -- I got it done in under a minute despite the sexual harassment that I received from you.

CHEMERINSKY: Jim?

COLEMAN: I think that we accept that the students were innocent and we accept that because of an extraordinary series of events that led to that conclusion ultimately by the Attorney General publically stating his personal belief that they were innocent in dismissing the case.

A lot of people now sort of looking back trying to

deconstruct the case look at the things that they thing should've been done differently, could've been done differently, and so forth. I think that in that process it's important to consider what difference it would have made to have changed some of the things that happened or didn't happen on the ultimate outcome in the case. Because it didn't none of this stuff happened in a vacuum and that what Duke did affected what others did and if Duke had done something differently, it would've affected what Central did, what the community did. And so in looking at this case, identify those things that you think should've been done differently, but also take into consideration the impact that would've had on the ultimate outcome.

CHEMERINSKY: Latisha?

FAULKES: My students typically express an interest in going out and becoming lawyers for the community here in Durham, here in North Carolina. Many of my students are from very rural parts of the country, certainly, but of North Carolina specifically, and my call from this conference is two fold.

First for the media, come up with a more innovative way to discuss and describe stories as they relate to race, class, gender, and region. The old way of doing this discussion may be easily accessible, but it's completely unfair and

this case demonstrates that.

Second, as to the question of how we monitor the criminal justice system. North Carolina was innovative in creating their Innocence Commission, a commission which may have been these boys' only hope. But the truth is that we don't call upon our prosecutors or our judicial system to make sure that we have not convicted innocent people. What happened here happens all the time. It has happened in North Carolina at least four times that we know of, but our public policy is to ignore the possibility of others, and that's inappropriate. And this is an opportunity for the media to take advantage and to find these other stories and bring them to light to redeem themselves.

HAAGEN:

I think there are two things that I want to say. One is to try to put some of this in a little perspective. A poll just came out in the UK in which 20 percent of the people polled thought that the McCanns were not guilty of the murder of their child. Now, we have a lot of places around the world where people rush to judgment. It is a systemic problem, and I think we need to recognize that we're part of that set of issues.

The last thing I just want to quote from an article by Bob

Darden talking about the sociology of the newsroom, and the article is called "All the News That Fits We Print." And I think it's a fairly profound piece. What he was essentially saying is we write to what we think people's preconceptions are and that creates some very significant problems with issues of race or power or anything else, because clearly what's going on is the ability of audiences to hear narratives and these are serious, fairly profound problems.

QUINTANA:

Yes, they are. In part because my job as a general assignment reporter often is to shoehorn lots and lots of facts that I've learned about in about the last eight hours into a minute and a half piece to show the 6:00 or the 7:00 news. That's difficult, and it does not provide for a lot of discussion.

On the flip side, I get told all the time that you're boring, your newscasts are boring. So we're caught by trying to get people to watch the news and understand what's going on around them and, of course, we've got a half hour or sometimes an hour and we can't devote it to one whole subject, because we're trying to give the broad stroke of the news.

My challenge is to do a good job each and every day with



the stories that I'm doing, and I can tell you that sometimes that does happen, yes, whatever we got, we'll run. But there's a lot of discussion. Sometimes there is some arguments. I can raise my voice pretty loudly if I need to about certain things and fight for stories that I think are fair.

I think to sum up very quickly though, this story allowed people to see that they are not immune from justice gone awry. And I think that's probably the most powerful part of this story. I mean, I just came back from covering Jena, Louisiana. I just did a story about this guy named James Johnson out in Wilson. This happens to people all the time, they just happen to be poor and often times black, and that's why this story happened to blow up beyond what everybody else had anticipated in part because it turned into one of those wrongfully accused stories too.

ROTBERG:

I think that with few exceptions this case exposed the basest character of the modern broadcast media, the eagerness of the American public to receive information tearing down a powerful and exclusive university, and the self-serving motivations of those who are supposed to be our most trusted public officials.

The university is only now beginning to heal, and I think that once all of the Duke out of Durham stickers are removed from still angry students' cars then we will have truly moved on, and I am not going to be here for that, but I wish you luck and strength as the university moves forward.

QUINTANA: They'll probably get jobs too and just drive their cars out.

CHEMERINSKY: Please join me in thanking the panel for a wonderful discussion.