

THE DUKE ADMINISTRATION'S RESPONSE TO LACROSSE ALLEGATIONS

William G. Bowen and Julius L. Chambers

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We were asked by President Richard Brodhead to investigate the handling by the Duke administration, including the athletics department, of the allegations against lacrosse team members associated with a party held on March 13-14 at 610 N. Buchanan Blvd.¹ In carrying out our charge we have, we believe, received full cooperation from everyone with whom we have had contact at Duke. We were given extensive written materials, including police reports, internal memos, email chains, and press clippings. To the best of our knowledge, nothing was kept from us. A list of those whom we interviewed is appended to this report. In the time available, it was not possible to examine every facet of a complex situation in detail or to speak personally with everyone who had information to contribute. Nevertheless, we believe we have gained an understanding of the principal issues. We begin by listing major findings and conclusions and then, at the end, suggest a few possible opportunities to learn from these events.

MAIN FINDINGS AND CONCLUSIONS

A. Slowness in Responding

The Duke administration was much too slow in understanding and addressing the serious and highly sensitive issues raised by the rape allegations and associated events. As one person put it, there was “radio silence” for too long. Some members of the Duke community interpreted the lack of prompt response as an indication that the administration was not taking the events

¹ We took the liberty (with Duke’s agreement) of adding Dr. Danielle Carr Ramdath to our two-person team, and Dr. Carr participated in almost all of our interviews, kept her own notes, and helped in editing this report. Dr. Carr is a Duke alumna (PhD in mathematics), an African-American woman, and a member of the Mellon Foundation staff with special responsibility for liberal arts colleges, HBCUs, and Appalachian colleges.

seriously and was not being forthcoming about them. Then, initial statements and responses left many dissatisfied until the release of the President's long Letter to the Duke Community of April 5—which has been widely applauded. *We find no evidence, however, that this delay represented any effort to cover up the problems revealed by these events, to deceive anyone, or to play down the seriousness of the issues raised.* The slowness was primarily the result of two failings—both errors of judgment.

1) *First, there was a major failing in communications,* and here the Duke Police Department and those to whom it reports bear primary responsibility. Specifically:

* After the victim of the alleged assaults was taken to the Emergency Room of the Duke Hospital in the early morning hours of March 14, having earlier told Durham police that she was raped and sexually assaulted by approximately 20 white members of a Duke team (a charge later modified to allege an attack by three individuals in a bathroom), the official report of the Duke Police Department was submitted and reviewed by the Duke Police Director, Robert Dean, at 7:30 a.m. on March 14. This report indicated clearly that the individual making the allegations was a black woman—though information about her race and about the racial aspects of the case did not reach key administrators (including President Brodhead) until March 24. The substance of the report, including the fact that the students involved were lacrosse players but not the fact that the presumed victim was black, was communicated by Mr. Dean by phone to the Assistant Vice President of Student Affairs and Dean of Students, Sue Wasiolek, on the morning of March 14. Dean Wasiolek immediately contacted the lacrosse coach, the Director of Athletics, and others in the athletics department, who in turn contacted members of the lacrosse team. Dean Wasiolek also contacted her supervisor, Vice President for Student

Affairs Larry Moneta, but neither Wasiolek nor Moneta was aware of the racial aspects of the situation until March 24—a gap in communications that is extraordinary.

* The initial Wasiolek/Moneta round of communications reached the Executive Vice President (EVP), Tallman Trask, but not members of the academic side of the Duke administration or the President until much later. The Public Affairs office was not briefed until Friday, March 17 (after having first learned of the incident that day by monitoring a community listserv), in spite of newsworthy events in the interim, including a search by Durham police of the house at 610 N. Buchanan and an appearance at police headquarters by three members of the lacrosse team, who agreed to submit to DNA testing. President Brodhead first learned of the incident from an article in the student newspaper on March 20; he then learned about the DNA testing on March 23 from Senior Vice President of Public Affairs, John Burness, who had received calls from the local media asking for comment. On March 24, the press reported that members of the team were being investigated. On March 25, President Brodhead (and others at Duke) first learned from a newspaper account that the alleged victim was a student at an historically black university in Durham, North Carolina Central University (NCCU).

* Another gap in communications involves racial slurs. The Duke Police Department received a call from Durham 911 at 12:41 a.m. on March 14, informing them that Durham 911 had received a call about racial slurs coming from a house at 610 N. Buchanan Blvd., and that the house in question was a “frat house.” Duke Police offered to send someone to the scene, and later that evening officers did go to the 610 N. Buchanan Blvd. house but found no one at home. (Durham police had gone to the house earlier and had also failed to find anyone at home.) Apparently news of this 911 call, and

the reported racial slurs, did not move up the administrative ladder; President Brodhead did not learn this information until March 28, during a news conference. A neighbor, identified by *The New York Times* as Jason Bissey, also reported hearing racial slurs, but we have been unable to find an official record of his report.

* A final communications issue concerns the efforts by the Durham police to obtain information from the Duke email account of a lacrosse player, Ryan McFadyen—information that eventually led to the wide publication on April 5 of the inflammatory email message sent by McFadyen in the early morning hours of March 14 proposing to kill and “skin” strippers for sexual gratification. The Durham police first contacted Duke about these email records on March 27, when they also obtained a warrant and searched McFadyen’s room. These activities by the Durham police should have alerted Duke authorities to the fact that there were potentially important issues involving McFadyen, but President Brodhead and others at Duke were apparently taken by surprise when the inflammatory email was made public and elicited wide public outcry on April 5. We recognize, however, that Duke authorities did not want to interfere with the ongoing criminal investigation, which was a serious complication throughout, by pursuing the substance of McFadyen’s email communications on their own.

2) *A second major failing—apart from communications problems but related to them—was that Duke administrators (especially Duke police, Dean Wasiolek, and Vice President Moneta) seriously underestimated the seriousness of the allegations.* There are reports from several sources that members of the Durham police force initially (March 14) made comments to Duke police officers and others to the effect that the complainant “kept changing her story and was not credible;” that “if any charges were brought, they would be no more than

misdemeanors;” and that “this will blow over.” When Dean Wasiolek called her colleagues to inform them of the incident, she also conveyed the police’s assessment that the alleged victim was not credible. The discounting by police and others of the importance of the seriousness of the allegations may have reflected a belief that the matter would not be pressed because the charging party was not that important or reliable. When President Brodhead first learned of the allegations on March 20, he called Vice President Moneta, who told him that “the accusations were not credible and were unlikely to amount to anything.”

Taking at face value the reported comments of Durham police officers (and perhaps others), and allowing their interpretations of credibility and seriousness to shape Duke’s thinking, was a major mistake. Dean Wasiolek told us that she now agrees with this assessment and in the future will do much more to check out serious allegations on her own, rather than rely on second-hand information and the judgments of others.² A member of the Duke law faculty was similarly categorical in stating: “Duke can’t rely on second-hand reports about credibility.”

This underestimate of the seriousness of the matter affected the lacrosse players as well as the thinking of the Duke administration. The players may have been lulled into a false sense of security about the events shortly to unfold and might well have sought legal counsel sooner had they been aware of the stakes. Some parents of the lacrosse players were (and are) distressed by the failure of Duke authorities to alert the students and their families to the seriousness of the situation in the days immediately following the party.

² Duke officials might possibly have reacted differently had they been aware that one female member of the Duke Police Department, who was on the scene at the Emergency Department of the hospital and who attempted to calm down and reassure the young woman, saw that she was “crying uncontrollably and visibly shaken... shaking, crying, and upset”—a description of behavior which doesn’t suggest that the case was likely to just “go away.” This on-the-scene account was provided only on March 28, in response to a request from the Durham police. We regard this as another communications gap.

B. Responses by the Athletics Department and Student Athletes

1) *The athletics department, and certainly those responsible for the lacrosse team, did not oversee properly the conduct of members of the team or succeed in instilling proper values.* The eventual decisions by Duke to cancel the season and accept the resignation of the lacrosse coach (on April 5) reflected the University's recognition of the seriousness of this situation at that time. However, a number of people have suggested that this problem was evident much earlier (even years earlier, given the history of disciplinary issues involving members of the team³), and that clearer and firmer actions in earlier days might well have reduced the likelihood that the party of March 13-14 would have unfolded as it did. Questions about the priorities of Coach Pressler and the athletics department had been raised earlier, for example by Professor Peter Wood, who had complained about Coach Pressler's scheduling of a "required" extra practice during morning class time in the last week of term. Another committee has examined the culture of the lacrosse program, and we will say no more about this subject, or the still larger subject of the performance of athletes generally, except to note that several people with whom we spoke expressed concern about "mission creep" and the widening of an already evident academic-athletic divide at the University.

2) The athletics department's comportment in the immediate aftermath of the March 13-14 party exacerbated negative perceptions of Duke's priorities and sensibilities—perceptions held by some faculty and others on campus and by some members of the off-campus community. Coach Pressler's early comment to the effect that his team was "focused on beating

³ See the *Report of the Lacrosse Ad Hoc Review Committee*, especially pp. 7-16. The Report states: "By all measures that we considered, the disciplinary record of the lacrosse team was noticeably worse than the records of all other athletic teams (p. 14)." Professor James Coleman, who led the study of the lacrosse program, was quoted by *The News and Observer* as saying: "The deplorable disciplinary record of the lacrosse team reflects the extent to which they let down those who trusted them, including their coach, their families, and the university" (May 2, 2006, p. A1).

Georgetown,” “distractions” notwithstanding, was seen as obtuse, at the minimum. Similarly, the decision to continue practicing as the investigation proceeded (which President Brodhead approved at the time), angered some people. The widely-noted presence of lacrosse players in a bar, cheering for Duke lacrosse, was another aggravation. Finally, the comment by Director of Athletics Joe Alleva at the March 28th news conference, that the lacrosse players were “wonderful young men,” did not sit well in light of what was known about earlier disciplinary problems. (Alleva did go on to observe that: “Unfortunately, sometimes young men have bad judgment.”) Increasingly, the lacrosse team was seen by at least some part of the Duke/Durham community as a manifestation of a white, elitist, arrogant sub-culture that was both indulged and self-indulgent. In the eyes of some faculty and others concerned with the intersecting issues of race, class, gender, and respect for other people, the athletics department, and Duke more generally, just didn’t seem to “get it.” This early impression was changed, rather markedly we believe, by President Brodhead’s letter of April 5 (see below).

3) Contrary to the views of some, Duke authorities, including initially Dean Wasiolek and later EVP Trask and President Brodhead, urged members of the lacrosse team to speak the truth and to cooperate fully with the Durham police authorities. *We find no evidence to support suggestions that the administration may have encouraged the athletes, or the athletics department, to cover up any conduct.* Indeed, on March 16, three players resident at 610 N. Buchanan agreed to go to the Durham police station and volunteered to submit to DNA testing and take a lie detector test. They are said to have given, among the three of them, more than 25 hours of testimony. Nor surprisingly, parents of lacrosse players became concerned about protecting the legal rights of their sons and criticized Dean Wasiolek for not urging them to get legal representation right away. Similarly, as noted above, the families of some players were

sharply critical of Duke administrators for misleading them and their sons as to the seriousness of the allegations. Subsequently, lawyers representing the players instructed them to cover their faces from photographers when arriving at the police station to give DNA samples and not to testify while the investigation was ongoing. The so-called “wall of silence” surrounding the athletes was a result of the lawyers’ advice to their clients in the midst of an ongoing investigation. The negative public reaction to these actions, however, is perhaps understandable because they seemed to make Duke’s players, and Duke, appear to be much more interested in the team members than in the community and the broader issues raised by the rape allegations.

4) On March 24, President Brodhead asked EVP Trask to meet with four lacrosse captains to review the incident; Mr. Trask, in turn, asked Athletics Director Alleva, Coach Pressler, and Associate Director of Athletics Kennedy to participate in this meeting. The captains denied the allegations and asserted that they had had no sexual contact with the women. Earlier, Dean Wasiolek had had similar conversations with similar results. In short, the administration tried to learn what it could about the events of March 13-14 directly from the lacrosse players and encouraged the players to be forthcoming. At the same time, President Brodhead and others have recognized all along that it is only the courts that can hear properly both sides of a case such as this one and arrive at what one hopes will be a clear (and fair) conclusion.

5) The subsequent decision by Duke’s Director of Athletics to accept the resignation of lacrosse coach Mike Pressler—however merited the decision may have been, given the history of disciplinary problems on the team—had, we were told, a very negative impact on many of the lacrosse players who felt “abandoned.” (Associate Director of Athletics Kennedy is, however, credited with helping to ease these problems.) It is also unclear how effectively the problems

with discipline on the lacrosse team had been communicated to Coach Pressler, and there are contradictory statements as to whether, and how explicitly, Coach Pressler had been warned that the behavior of team members had to improve.⁴ In any event, it is clear to us that there was not effective oversight of student behavior.

C. The President's Handling of the Issues—Including the Character and Tone of Public Statements

1) The first public comment by Duke on the lacrosse situation was a posting on the Office of News and Communications Web site by Vice President Burness on March 24—in response to multiple phone calls from the *News & Observer*. Some faculty members, in particular, have questioned whether it was wise for the first response to come from the head of “PR” rather than from the President himself. On the one hand, President Brodhead knew little at this time and it may have seemed better for him to wait a bit to speak out; on the other hand, this handling of the first official Duke pronouncement, coming a full 10 days after the incident, had the unfortunate effect of reinforcing the view of some that Duke cared mainly about PR matters and less about the core issues of values and behavior—and was trying to cover up the situation.

2) In any event, it is clear that once President Brodhead had the information he needed to appreciate the extreme seriousness of the allegations, he took direct personal control of Duke's response. He convened a Crisis Management Team (CMT) which met for the first time at his residence on Saturday, March 25, and then met often thereafter. We believe that the President should be commended for his unequivocal acceptance of responsibility for addressing the myriad issues raised by the allegations and the public reaction to them.

3) President Brodhead's first statement, issued March 25 and appended to this report, tried to do four things:

⁴ See the *Report of the Lacrosse Ad Hoc Review Committee*, especially pp. 17, 20-21.

* First, state in clear and unequivocal language that: “Physical coercion and sexual assault are unacceptable in any setting and have no place at Duke. The criminal allegations against three members of our men’s lacrosse team, if verified, will warrant very serious penalties.”

* Second, remind people that “the facts are not yet established... and people are presumed innocent until proven guilty.”

* Third, urge everyone to cooperate to the fullest with the police inquiry.

* Fourth, recognize that: “whatever the inquiry may show, it is already clear that many students acted in a manner inappropriate to a Duke team member in participating in the March 13 party....” and encourage the Athletics Director and others to “respond to the conduct that is not in question.”

The above statement notwithstanding, it remains unclear to us and to others whether—had there been no rape allegation and no criminal investigation—the party itself would have led to a serious investigation and possible disciplinary actions. This large unanswered question points directly to concerns about the code of conduct and judicial and disciplinary procedures mentioned later in this report and reviewed by another committee.⁵

Reasonable people may disagree about the weight given to these various points in this early statement and in subsequent press conferences and meetings. Some have continued to feel that President Brodhead should have emphasized more strongly the presumed innocence of the team members and the fact that they had cooperated fully with the police authorities in the days immediately following the party. It is understandable, however, that others were disappointed by what they regarded as a “tepid” response that put too much weight on legal considerations and

⁵ See *An Examination of Student Judicial Process and Practices* (May 1, 2006).

gave too little attention to the rape allegation itself and related issues. But everyone should recognize that when the March 25th statement was drafted, President Brodhead was aware of the accusation of rape—which he took very seriously—but unaware of the racial aspects of the situation; and of course the highly inflammatory email about “skinning” the strippers had not come to light. At the same time, it is fair to ask again why Duke was still unaware, nearly two weeks after the event, of its racial aspects, which were to become so prominent. We have noted above the early communications failures that were directly responsible for this situation, but the fact that Duke administrators did not seek more information, for example by reviewing internal documents generated by Duke Police, raises questions about sensitivities.

President Brodhead’s later “Letter to the Duke Community” of April 5 (also appended to this report) is much stronger in addressing the woman’s allegations and is eloquent in its denunciation of rape as “the substitution of raw power for love, brutality for tenderness, and dehumanization for intimacy.” The April 5 letter describes rape as “the crudest assertion of inequality, a way to show that the strong are superior to the weak and rightfully use them as the objects of their pleasure.” President Brodhead then went on to address explicitly the racial aspects of the situation, which had been hidden from his view earlier. He said: “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.” Later in the letter, President Brodhead is more emphatic than he was in earlier communications in recognizing that “the acts the police are investigating are only part of the problem. . . . The episode has brought to glaring visibility underlying issues that have been of concern on this campus and in this town for some time... They include concerns about the survival of the legacy of racism, the most hateful feature American history has produced.” He then addressed concerns about “the deep structures of