

***Journal of Issues in* Intercollegiate Athletics**

Institutional Failures

Edited By Howard Wasserman. Published 2011 by Ashgate Publishing Company, Burlington, VT. (212 pages).

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Disturbing. Challenging. Instructive.

There are a number of responses to Howard Wasserman's *Institutional Failures*, whether one reads it as a lawyer, scholar, administrator, or journalist. But the three words that begin this review describe how Wasserman's book invites readers into a place of intellectual discomfort, where disconcerting reflections about our institutions compel us, in the end, to examine ourselves.

This collection of essays is not a comprehensive account of the events that began in the spring of 2006, when an exotic dancer's accusations led to the charging of three Duke University men's lacrosse players with sexual assault, and subsequently engulfed Duke and the city of Durham, N.C., in controversy and media attention. It does, however, show the impact of three institutions—the legal system, Duke University and American higher education, and the news media—on the development, framing and outcomes of what has become known as the “Duke lacrosse case.”

Wasserman's essayists include an A-list of scholars in law, history, media and sport management, as well as an assignment editor for *USA Today* who was former managing editor of *American Journalism Review*. Each takes a different perspective regarding one of those institutions, which make up the three parts of the book. Some of the authors played a direct role in the institutions they discuss: Brooklyn College history professor KC Johnson started a blog about the case during the investigation that exposed serious missteps by the prosecution; Rachel Smolkin's piece in *American Journalism Review* was perhaps the earliest major criticism by a journalist of the mainstream news media's coverage of the case.

The essays accomplish much of what the book sets out to do. The legal system pieces provide understanding of the errors and deceptions within the investigation and prosecution, what made them so egregious, and why the punishment of their primary perpetrator (former Durham District Attorney Mike Nifong) was so unusual. They give thorough explanations of the statutes behind the ongoing federal suits by the indicted and non-indicted players. The legal system

essays also point out disturbing realities about the ways that electorates, preconceived narratives, and the possession of financial resources can influence the outcome of investigations.

The pieces about Duke University and American higher education are particularly challenging to fondly-held notions of administrators and faculty who are fair and decisive leaders, stand behind their students, are quick to ask questions and slow to accuse. At best, Duke administrators and faculty are shown as reactionaries whose greatest concerns were protecting the image of their university and fighting the perception of a culture of privileged permissiveness. At worst, they are portrayed as unwieldy demagogues who use students as target practice for their own agendas, but refuse to own up to the carnage once the smoke clears and the truth is revealed. Some significant exceptions are noted, but the evidence of a rush to judgment by Duke University administration and many Duke faculty implies an institutional system that—given the right set of circumstances—favored a witch hunt over the scientific method.

Perhaps the most instructive section of *Institutional Failures* is that of the news media. These essays chronicle local and national coverage of the case: in print, online and on TV. While the focus is primarily mainstream and legacy media, the writers also discuss the role of blogs and new media in turning over some of the stones that others were content—or intent—to ignore. A compelling (though untrue, in this case) narrative, combined with a competitive drive to be “first” led reporters, columnists and commentators from news outlets great and small to reckless and poorly-informed conclusions. At the same time, non-journalists using non-traditional media picked up and reported the trail of evidence that the legacy media were ignoring, largely through publicly available documentation regarding the investigation and the accuser’s criminal record. The essayists in this section offer important lessons and principled advice for media practitioners as well as the professors who teach the next generation of journalists.

As previously mentioned, this book is not a “catch-all” primer on the Duke lacrosse case. Nor does it fully unpack the institutions it intends to discuss. The greatest “miss” in this regard is in the section on Duke University and American higher education. While the essayists address the larger issue of tensions between athletics administration and faculty at Duke and elsewhere, there is scant attention to how Duke Athletics dealt with this incident among its administrators, coaches and staff. There is also little mention of the response to the crisis by its peer institutions in the Atlantic Coast Conference, the conference administration or the NCAA.

The essayists also have the tendency to be self-referential—both to their own work as well as amongst themselves. While their familiarity with each other’s ideas gives a sense of cohesiveness to the discussion, it also feels repetitive and stale at times. However, the authors also offer a wealth of additional resources for anyone interested in further study of the case or its implications. The book or individual chapters could also be used to foster classroom discussion on a variety of topics.

Institutional Failures shows how legal, education and media systems, combined with power, privilege and resources, manufactured a scandal and, in the end, dismantled it. But the lessons the essayists offer will be most meaningful to readers who recognize their opportunities—and responsibilities—to apply them in their own contexts.