



**A Word from
Alberto Ibarguen**
President & CEO, Knight Foundation

Twentieth century entrepreneurs Jack and Jim Knight sought actively and aggressively to reflect in their newspapers the many communities they served. In the process, they helped build, define and even transform those communities by providing each of them a news operation that strove daily to present journalism's ideal: a full, accurate, contextual search for truth.

The need for that kind of shared information has not lessened with changing times and new technology. Solid information and informed debate remain at the heart of community—and yet facts and opinions, as the Duke lacrosse case demonstrates, are often in dispute.

In the aftermath, it would be easy to suggest that the case was somehow anomalous. In fact, the Duke case is only a recent instance of an increasingly frequent phenomenon in which individuals and institutions involved in court proceedings become the subjects of intense media scrutiny, public debate and speculation. As distinct as each of these cases are, they all raise fundamental questions about rights, ethics, professional standards and practices.

This conference comes at an important moment in the development of media, when the shift from the pace and norms of the past are in upheaval because of the speed and capacity of new technology. I look forward to deep and instructive conversations about ethics and values, fairness and responsibility.

We at Knight Foundation are privileged to support one of the nation's great law schools in this examination.

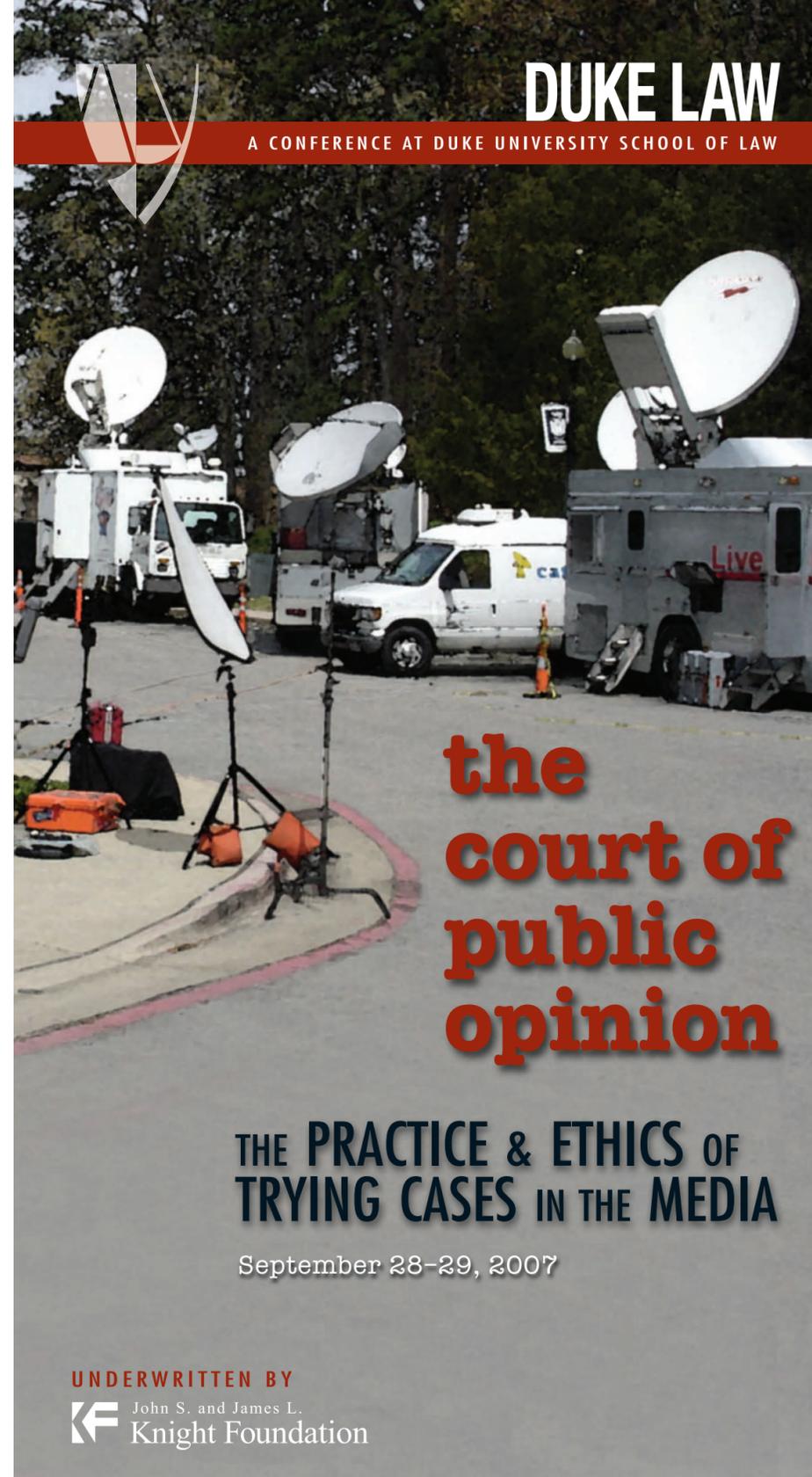
Knight Foundation

Funding for the conference is being provided through a generous grant from the JOHN S. AND JAMES L. KNIGHT FOUNDATION. The Foundation invests in journalism excellence worldwide and in the vitality of U.S. communities. Since 1950 the Foundation has granted more than \$300 million to advance quality journalism and freedom of expression. It focuses on projects with the potential to create transformational change. For more, visit www.knightfoundation.org.

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DUKE LAW

A CONFERENCE AT DUKE UNIVERSITY SCHOOL OF LAW

**the
court of
public
opinion**

**THE PRACTICE & ETHICS OF
TRYING CASES IN THE MEDIA**

September 28-29, 2007

UNDERWRITTEN BY
KF John S. and James L.
Knight Foundation



A Word from David Levi
Dean, Duke University School of Law



During spring break in 2006, members of the Duke lacrosse team hired two exotic dancers to perform at an off-campus party. One of the dancers alleged that she had been raped and so began what is now known as the "Duke lacrosse case." The combustible mix of sex, race, class, and college athletics proved irresistible to the prosecutor, the media, and the public. In the firestorm that followed, many behaved poorly. The prosecutor made a number of false and inflammatory statements to the media, some of the media re-published the information without questioning it, and some members of the public rushed to judgment. Eventually, thanks to the actions of the North Carolina Attorney General and the extraordinary intervention of the North Carolina State Bar, the three young men who had been unjustly accused were declared innocent and the prosecutor was disbarred.

Now it is time to look inward. Did the media permit itself to become the mouthpiece of an unethical prosecutor, and, if so, how can this be avoided in other high-profile cases? How could an experienced prosecutor deviate so quickly from basic ethical rules? Did the judicial system fail to exercise appropriate oversight? Was there a feedback effect such that some members of the public, aroused by the statements of the prosecutor and media coverage, in turn sought to affect the outcome of the prosecution?

High-profile cases tax the legal system just at the very moment when the public's confidence and understanding might be enhanced. While the details of such cases differ, they all raise fundamental questions about the proper balance between the rights of the individual and the public, and about appropriate conduct by members of the bench, bar, and media in response to intense public interest.

This conference will provide a forum for addressing these important issues. We are fortunate to have the participation of a number of experts who have wide-ranging experience in a host of high-profile cases. It is our hope that the discussions at the conference will lead not only to a better understanding of what has happened in past cases, but to the development of policies, structures, and practices that will permit us to more effectively recognize and safeguard the private and public interests at stake.

Conference Steering Committee • DUKE UNIVERSITY SCHOOL OF LAW

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- SARA SUN BEALE** Charles L. B. Lowndes Professor of Law
- PAUL H. HAAGEN** Professor of Law
- THOMAS B. METZLOFF** Professor of Law
- JAMES SALZMAN** Samuel F. Mordecai Professor of Law & Nicholas Institute Professor of Environmental Policy

the court of public opinion

THE PRACTICE & ETHICS OF TRYING CASES IN THE MEDIA

September 28-29, 2007

What catapults a case into the media spotlight? Who is responsible for focusing media and public attention on a particular case? And once a case gains high-profile status, what are the professional and ethical roles and responsibilities of members of the media, the bar, and the institutions involved, to ensure a fair hearing for the individuals at the heart of the case?

These are the questions to be examined during this two-day interdisciplinary conference. Experts from various fields will consider how the presence of certain core themes—including race, gender, class, and athletics—can turn an otherwise everyday case into a high-profile one. In so doing, they will examine the legal issues common to such cases, including First Amendment rights of free speech and of the press; ethical rules governing prosecutors, defense counsel, judges, and journalists; the desirability of public access to and scrutiny of the justice system; and the needs of institutions and individuals to defend themselves and their reputations in the face of intense public and media scrutiny.

Each of seven conference panels will focus on the perspective of one set of participants in a high-profile case, while a separate panel on comparative law will examine the proper balance between public and private interests. During Friday's lunch hour, a roundtable discussion will provide the opportunity to consider all of these issues and perspectives through the lens of a hypothetical case, while Saturday's lunch hour will offer a chance to hear from those who lived through Duke's recent experience in the spotlight.

Keynote Speakers



HODDING CARTER III Professor Carter will address the conference Friday morning.

Hodding Carter III is the University Professor of Leadership and Public Policy at the University of North Carolina at Chapel Hill, a post he assumed in 2006, following his tenure as president and CEO of the John S. and James L. Knight Foundation. Early in his career, Carter spent 17 years with his family's Greenville, Mississippi daily newspaper, working in reporting, editorial, and publishing roles. He then served as Assistant Secretary of State for Public Affairs and State Department spokesman under President Jimmy Carter, before entering the field of news and public affairs television. Working variously as anchor, commentator, production company president, and reporter over the next 14 years, he won four national Emmy Awards and the Edward R. Murrow Award for best foreign documentary. In 1994 he became the Knight Professor of Public Affairs Journalism at the University of Maryland, a post he held until 1998, when he joined the Knight Foundation.



HOWARD SCHNEIDER Professor Schneider will address the conference Friday evening.

Howard Schneider is the founding Dean of the School of Journalism and a Professor of Journalism at Stony Brook University. For more than 35 years, Schneider was a reporter and editor at *Newsday*. For 18 of those years, he was managing editor and then editor. Under his tenure in those positions, the paper won eight Pulitzer Prizes in categories ranging from investigative reporting to arts criticism. Schneider has been a member of the Pulitzer judging panel three times. In 2003, he received the outstanding alumnus award from the Alumni Association of the Columbia Graduate School of Journalism. At Stony Brook, Schneider developed and taught a course in the Values and Ethics of the American Press. With the help of a \$1.7 million grant from the Knight Foundation, he is currently spearheading efforts to teach the nation's first university-wide course in news literacy to 10,000 students.

conference program

Friday Panels

The Role and Responsibility of Traditional Media

moderator

SARA SUN BEALE Charles L. B. Lowndes Professor of Law, Duke University

panelists

SYLVIA ADCOCK Freelance journalist for *The Washington Post*; Lecturer, North Carolina State University

LOREN GHIGLIONE Richard Schwarzlose Professor of Media Ethics, Medill School of Journalism, Northwestern University

ERIC N. LIEBERMAN Vice President and Counsel, *The Washington Post*

MALCOLM MORAN Knight Chair in Sports Journalism and Society, Pennsylvania State University College of Communications

ARI SHAPIRO Legal Correspondent, NPR News

The Role and Responsibility of New Media

moderator

JAMES SALZMAN Samuel F. Mordecai Professor of Law and Nicholas Institute Professor of Environmental Policy, Duke University

panelists

KC JOHNSON Professor, Brooklyn College and The Graduate Center of the City University of New York, editor of *durhamwonderland.blogspot.com*

BEATRICE MYERS Executive Producer, CourtTV News

MARCY WHEELER Contributor as "emptywheel" to *TheNextHurray.com* and *FireDogLake.com*

KINSEY WILSON Executive Editor, *USA TODAY*

A "Fred Friendly" Roundtable

moderator

JACK FORD Anchor, CourtTV News

panelists

PETER GILCHRIST District Attorney, Mecklenburg County, North Carolina

KIMBERLY GUILFOYLE Host, "The Lineup," Fox News

KERSTIN KIMEL Head Coach, Women's Lacrosse, Duke University

DAVID F. LEVI Dean, Duke University School of Law

SONJA STEPTOE Senior Correspondent, *TIME* magazine

ELLIOTT WOLF President, Duke Student Government, 2006-2007; Member, Duke University Class of 2008

The Role and Responsibility of Defense Counsel

moderator

ROBERT P. MOSTELLER Harry R. Chadwick Sr. Professor of Law, Duke University

panelists

MARK GERAGOS Principal, The Law Offices of Geragos & Geragos

HAROLD A. HADDON Member, Haddon, Morgan, Mueller, Jordan, Mackey & Foreman PC

LAURIE L. LEVENSON Professor of Law, William M. Rains Fellow and Director of the Center for Ethical Advocacy, Loyola Law School, Los Angeles

MICHAEL E. TIGAR Research Professor of Law, American University Washington College of Law

The Role and Responsibility of the Prosecutor

moderator

THOMAS B. METZLOFF Professor of Law, Duke University

panelists

R. MICHAEL CASSIDY Associate Dean for Academic Affairs, Professor of Law, Boston College Law School

COLM F. CONNOLLY United States Attorney, District of Delaware

MARSHA GOODENOW Assistant District Attorney, Mecklenburg County, North Carolina

Saturday Panels

Comparative Law Approaches to Media Access to Court Proceedings

moderator

FRANCESCA E. BIGNAMI Professor of Law, Duke University

panelists

LUCY DALGLISH Executive Director, The Reporters Committee for Freedom of the Press

PETER M. JACOBSEN Partner, Bersenas Jacobsen Chouvet Thomson Blackburn LLP, Toronto, Canada

GAVIN PHILLIPSON Professor, Department of Law, Durham University, United Kingdom

GIORGIO RESTA Associate Professor, Law Faculty, University of Bari, Italy

Institutional Response to Crisis

moderator

NOAH PICKUS Nannerl O. Keohane Director of The Kenan Institute for Ethics, Duke University

panelists

JUDITH CLAIR Associate Professor, Carroll School of Management, Boston College

RICHARD S. LEVICK President and Chief Executive Officer, Levick Strategic Communications

CRAIG A. MASBACK Chief Executive Officer, USA Track & Field

A Conversation: *Living through Lacrosse*

moderator

ERWIN CHEMERINSKY Alston & Bird Professor of Law and Professor of Political Science, Duke University

panelists

JOHN F. BURNES Senior Vice President for Public Affairs and Government Relations, Duke University

JAMES E. COLEMAN, JR. Professor of the Practice of Law, Duke University

PAUL H. HAAGEN Professor of Law, Duke University

RAYMOND C. PIERCE Dean, North Carolina Central University School of Law

EMILY ROTBERG Managing Editor, *Towerview* magazine, 2006-2007; Staff Member, *Duke Chronicle*; Member, Duke University Class of 2007

The Role and Responsibility of the Public

moderator

CHRISTOPHER H. SCHROEDER Charles S. Murphy Professor of Law and Public Policy Studies, Duke University

panelists

SCOTT G. BULLOCK Senior Attorney, Institute for Justice

ROBERT ENTMAN J.B. & M.C. Shapiro Professor of Media and Public Affairs, School of Media and Public Affairs, The George Washington University

KIMBERLY A. GROSS Associate Professor of Media and Public Affairs, School of Media and Public Affairs, The George Washington University

DORI J. MAYNARD President and Chief Executive Officer, Robert E. Maynard Institute for Journalism Education

STEVEN R. SHAPIRO Legal Director, American Civil Liberties Union

The Role and Responsibility of the Court

moderator

DAVID F. LEVI Dean, Duke University School of Law

panelists

GARY A. HENGSTLER Director, The Donald W. Reynolds National Center for the Courts and Media, National Judicial College

LEROI F. MILLETTE, JR. Chief Judge, Circuit Court, Prince William County, Virginia

W. TERRY RUCKRIEGLE Chief Judge, Fifth Judicial District, Breckenridge, Colorado

DAVID A. SELLERS Assistant Director for Public Affairs, Administrative Office of the U.S. Courts, Washington, D.C.

REGGIE B. WALTON Judge, The United States District Court for the District of Columbia

Documentary Premiere • VOICES OF AMERICAN LAW

Gentile v State Bar of Nevada

Criminal defense attorney Dominic Gentile was retained to represent a well-known Las Vegas businessman indicted for stealing cocaine and money from a Las Vegas police sting operation. The story had been big news in Las Vegas for a year, and so Gentile decided to hold a press conference on the day of the arraignment to proclaim his client's innocence and blame the police for the theft. After Gentile's client was acquitted at trial on all counts, the State Bar of Nevada filed a grievance against Gentile for his actions at the press conference, eventually issuing a private reprimand. The case ultimately reached the Supreme Court, where the resulting 5-4 ruling in Gentile's favor became a landmark First Amendment case.

This case is the focus of the latest in a series of video documentaries produced by Professor Thomas Metzloff as part of the Duke Law School series "Voices of American Law." The documentary, which includes interviews with Gentile, the main reporters who covered the story, the chair of the disciplinary panel who heard the case, as well as actual footage of the press conference, will have its public premiere at the conference on Friday afternoon.

Conference Journal • LAW & CONTEMPORARY PROBLEMS

Administrative and publication support for the conference is being provided by *Law & Contemporary Problems*, a quarterly interdisciplinary publication of Duke Law School. Founded in 1933, *L&CP* is jointly managed by a faculty editorial board appointed by the dean and a student executive board appointed by the outgoing executive board. The journal uses a symposium format, generally publishing one symposium per issue on a topic of contemporary concern. *L&CP* hosts an annual conference featuring the authors of one of the year's four symposia, and has generously agreed to serve as host for this conference. Papers by a number of conference participants will be published in a 2008 issue of *L&CP* devoted to the conference. For more about *L&CP*, visit www.duke.edu/journals/lcp/.

General Information & Conference Registration • CLE CREDIT AVAILABLE

For additional information about the conference and to register to attend, please visit the conference website at www.law.duke.edu/conference/2007/publicopinion/. From there, you will be directed to a secure website where you may register online.

The registration fee for the entire conference is \$325. Partial registration is available for those unable to attend the entire conference.

Lodging during the conference is available at **The Washington Duke Inn & Golf Club**, which will host the conference dinner on Friday evening, and at other area hotels. Additional lodging information is available on the conference website.

Questions about the conference should be addressed to Kathryn Bradley, Chair of the Steering Committee, via email at kbradley@law.duke.edu, or via phone at 919-613-7014.