

But such limitations may be a price Ramsey willingly pays to disentangle his exposition from the distorting fervor of contemporary debates. He does gain something by offering himself simply as a special consultant on historical questions. What he says is unfailingly intelligent, and often provocative, in the way a new and well-developed argument shakes complacent or thoughtless assumptions. Perhaps it is understandable that he does not feel compelled to draw out the moral for national security policy or participation in global governance. He can afford to leave much of the argument to others.

Ramsey's book will be an essential starting point for future debates. Lawyers in the executive branch will need to study and consider its arguments, even where they disagree with some of its conclusions. Critics of executive policy will also find helpful guidance in Ramsey's book. *The Constitution's Text* sets the standard for what, in the first place, should be offered to support a serious conclusion.

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## Until Proven Innocent: Political Correctness and the Shameful Injustices of the Duke Lacrosse Rape Case

BY STUART TAYLOR & K.C. JOHNSON

*Reviewed by Michael Madigan\**

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Your son, a college student and athlete—a good kid who is a year away from graduating from a well-regarded university—is about to compete for a national championship in a major college sport. You could not be more proud. Until, his and your world come crashing down. He and his teammates are falsely accused of a crime—a terrible crime.

The story gets worse. Your son is not only accused, his case is sensationalized on national television. Your son and his teammates are pursued by a crazed prosecutor desperately seeking re-election, who goes on all the TV shows and says the boys are guilty. This prosecutor is determined to do anything it takes to convict your son and put him in jail—for many years.

But there is more. Your son's University President, and many of the faculty, turn against the boys and denounce them publicly. The University then fires their coach and cancels their athletic season, ending any opportunity to compete for the National Championship.

Before the spring of last year your reaction probably would be that such a thing could not happen in the United States. The old Soviet Union maybe. Other places in the world. But not in this county. But it did. And Stuart Taylor and K.C. Johnson lay out the whole sorry, sad, and outrageous tale in *Until Proven Innocent*—a must-read for every parent with even a passing interest in the criminal justice system in our country. The book takes the reader on a long and careful journey through what really happened, from the March 16,

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\* Mr. Madigan is a Senior Partner in the law firm of Akin Gump Strauss Hauer & Feld LLP, a former federal prosecutor and specializes in white collar criminal defense.

2006 party through the indictment of three innocent Duke Lacrosse Team players to the disgraced resignation of the prosecutor.

The book meticulously details the Duke Lacrosse case from beginning to end. Its revelations are nothing short of shocking. It reveals how an elected criminal justice official, Michael Nifong, the District Attorney for Durham County, North Carolina, became a "rogue prosecutor" (so-called by the North Carolina Attorney General after his office conducted a special investigation of the prosecutor's conduct) seeking to buttress his difficult upcoming re-election campaign by railroading innocent college students and trumpeting his actions on national television—appearances during which he not only falsely accused them but misstated and in some cases outright made up "evidence" which never existed, not only just about destroying innocent lives but intentionally inflaming race relations in a diverse community.

Nifong failed to even interview the alleged victim for months, withholding from the defense DNA evidence which confirmed the boys' innocence, using a photogenic identification process which has been outlawed for years to try to influence the accuser to identify a Duke lacrosse player. The book notes the fact that the accuser told the police at the time of the incident that the perpetrators were named Adam, Brett, and Matt and that she remembered clearly that Matt said "he was getting married tomorrow." But none of the players were getting married any time soon and the players ultimately indicted were Dave, Collin, and Reade. Nifong also refused to accept the boys' offer to take polygraph exams or look at documented exculpatory evidence such as time-stamped photos proving one of the boys was not even at the party at the time of the alleged incident.

Nifong's conduct was aided and abetted by a police officer with a grudge against the University and a series of media personalities who prejudged the case and repeatedly condemned the boys on national television, often by trumpeting facts which were demonstrably untrue. Duke's President, Richard Brodhead, also proclaimed the boys guilty before the evidence was in, and a large number of Duke faculty did the same. The condemnation reached its pinnacle when "wanted posters" (similar to those seen in post offices for criminals) appeared throughout the Duke campus with photographs and names of the entire Duke lacrosse team. As this virtual lynch mob engulfed Duke, only one faculty member stood firm and tall, supporting the need for the due process of law— Professor Jim Coleman, who ultimately conducted the independent review that condemned the prosecutor's actions.

When the hidden evidence finally saw the light of day, Nifong was forced to step aside, and the North Carolina Attorney General conducted a thorough investigation of what really happened that night in March at the lacrosse party. He reported:

With the weight of the state behind him, the Durham district attorney pushed forward unchecked. There were many parts in the case where caution would have served justice better than bravado. And in the rush to condemn, a community and a state lost the ability to see clearly. Regardless of the reasons this case was pushed forward, the result was wrong. Today, we need to

learn from this and keep it from happening again to anybody... This case shows the enormous consequences of overreaching by a prosecutor. What has been learned here is that the internal checks on a criminal charge—sworn statements, reasonable grounds, proper suspect photo lineups, accurate and fair discovery—all are critically important.

How could this happen in a country which is supposed to have the finest justice system in the world? And, if it can happen to three kids whose families were able to mount the resources to fight back, how about the thousands who cannot? It should come as no shock, considering this case, that more than 200 prisoners have been exonerated since the advent of DNA evidence in the late 1980s, including fourteen innocent death row inmates. Or that the grand jury system, which has eroded greatly over time, failed in this instance. The grand jury was designed by our forefathers to serve as a strong and meaningful check on rogue prosecutors. But today, across our country, it seems, nothing like this system can be found in practice. As the authors describe, the grand jury in the Duke case did exactly what Nifong asked; it indicted the three players. It may shock the average citizen to know that

the Durham grand jury heard no testimony from (the accuser), (the other dancer who was there at the scene and told the police that no assault happened), any lacrosse player, any doctor or nurse, or anyone else with firsthand knowledge of what had happened. The only witnesses were two cops who had already lied repeatedly to the players and the court about the case

What corrective one draws from this story, if any, is open to debate, but what Taylor and Johnson convey clearly in *Until Proven Innocent* is just how much damage a rogue prosecutor can wreak. Anyone who reads it might well come to the conclusion that, had justice prevailed, it would be Nifong who should have been indicted, convicted, and sentenced to serve substantial time in jail.

## The Founders on Citizenship and Immigration: Principles and Challenges for America

BY EDWARD J. ERLER, THOMAS G. WEST & JOHN MARINI

*Reviewed by Margaret D. Stock\**

Given the prominence of immigration issues in American politics today, an up-to-date and scholarly volume on the Founders' views on immigration and citizenship issues could benefit those who seek an understanding of first principles. Unfortunately, *The Founders on Citizenship and Immigration*, a slim volume of four essays, will not answer the pressing need for an authoritative resource. The book is mostly not about the Founders, and provides little in the way of a scholarly addition to the debate. Instead, all but one of its

\* Margaret D. Stock is a Lieutenant Colonel in the Army Reserve, and an Associate Professor in the Department of Social Sciences at the U.S. Military Academy at West Point (NY). Those interested in immigration issues should read Marc Harrold's article on "sanctuary cities" in the *Criminal Law and Procedure* section.

essays simply repeat the restrictionist arguments made in the popular press in the last few years—often lacking citations, and nearly always without consideration of alternative, contradictory sources. Conservatives and libertarians who appreciate the value of understanding "original intent" when evaluating constitutional debate, and who would like to pursue this approach with immigration issues, will be disappointed.

The book's four chapters include an introduction and three essays, each written by one of the co-authors. Edward J. Erler's introduction offers a highly slanted view of the current politics of immigration—one with which many conservatives and libertarians would disagree. For example, in the first section, Erler states that "there is no special interest constituency for restricting immigration," and argues that expansive immigration legislation is repeatedly passed by a Congress oblivious to public opinion so that all immigrants—legal and illegal—can become "malleable clients for the ministrations of the welfare state." In fact, Congress in the past twenty years has found it quite difficult to pass any legislation favorable to immigrants—nearly all significant immigration legislation since 1986 has been "enforcement only" legislation. Congress has been extraordinarily sensitive to the views of angry restrictionist factions, such that a vocal group of anti-immigration "special interests" was largely responsible for the recent defeat of comprehensive immigration reform. In another example contrary to Erler's thesis, immigrants—both legal and illegal—have been mostly barred from obtaining welfare benefits since the 1996 welfare reform laws. Today, it is mostly U.S. citizens who are the clients of "the welfare state," such as it exists—as the State of Colorado found recently when it verified the status of all of its welfare recipients and found only U.S. citizens on the dole.

All three of the authors purport to rely on the Founders' views to support their conclusions, but the authors' policy prescriptions for today do not necessarily follow from the "founding principles" they discern in the Founders' words. In the introductory chapter, for example, Erler discusses Thomas Jefferson's opinions on the character of likely immigrants and what character would be necessary to make good citizens. According to Erler, Jefferson expressed concern that "most of the immigrants to America would be refugees from absolute monarchies" who would not have the habits necessary to make good American citizens because "the habits and manners of freedom are not so easily acquired." If one believes that this principle should determine which foreigners are permitted to immigrate, then presumably the United States should favor those immigrants who come from more democratic societies, and disfavor those from totalitarian regimes. But no one today would argue that Cuba is more democratic than Mexico—why then, do the book's authors apparently favor an immigration policy that gives automatic amnesty to almost all Cubans who arrive in the United States, while making it almost impossible for citizens of the far more democratic Mexico to immigrate legally?

Erler's second essay in the book focuses mostly on the birthright citizenship issue. Birthright citizenship is of intense interest to many conservatives and libertarians—but understanding whether the Fourteenth Amendment demands