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## Morning Keynote Address: Surviving the Media Onslaught

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**MORNING KEYNOTE ADDRESS:  
SURVIVING THE MEDIA ONSLAUGHT**

*Joseph B. Cheshire V*

**KATIE DORAN:** Mr. Cheshire has already thoroughly introduced himself on the panel but I'd like to reiterate a few things. He is a very prominent defense attorney in North Carolina. He has his own criminal defense firm and has also done civil defense. He just told me that his greatest accomplishment is starting an indigent defense service in North Carolina and thinks it's one of the best in the country. Mr. Cheshire is very passionate about criminal defense work and thinks that what he does is a calling for him.

When he was 15 or 16, Mr. Cheshire got to sit down and have a private one-on-one conversation with Dr. Martin Luther King, Jr. at which point Dr. King inspired him to want to do something to help people as much as he could, which I think he has done admirably in his work as a lawyer. Also, Mr. Cheshire is a proud graduate of UNC and so we'd like to especially thank him for coming here today despite UNC playing in the basketball tournament.

**JOE CHESHIRE:** Thank you. I hope you all can hear me again. My voice is kind of going on me. I am, as I said earlier, really pleased to be here.

When she referred to the Indigent Defense Commission, just to tell you all a little bit about it, our indigent defense used to be controlled by judges in North Carolina, which means there wasn't much indigent defense, with all due respect to my friends on the bench. We changed it in North Carolina to where criminal lawyers run indigent defense and the legislature funds the Indigent Defense Services Commission, they fund the lawyers, and the quality of indigent defense in our state has gone up probably 1,000 percent since that happened. That, and the

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assistance of one of the first states to have open file discovery.

I'll tell you this story real quick just because everybody seemed to have found it so interesting about Dr. King. When I was 12 years old my parents sent me up to Boston to a school called Groton School which at that time was a very elite northern school where the Roosevelts and other people went, and I was one of only three people from the south. For you older people, you will remember this; for any of you that are below 50, you won't know this, but to get the same cultural experience today, you'd have to send your child to Bangladesh, because the north and the south were two entirely different places back then and we didn't have television to bring them together. The headmaster of our school was very active in the civil rights movement and he had asked Dr. King to come and visit. Dr. King was a young man then. And the headmaster chose me, a little 15-almost 16-year-old southern boy, to show him around the school. I got to spend about an hour alone with him. We walked down to the river and back, which took about 45 minutes.

We talked a lot about the civil rights movement-my family had been very deeply involved in it in North Carolina-and he said, well, what's it like being a southern boy up here in the north? And I said, well, Dr. King, it's really hard. Every time I open my mouth, people laugh at me. Every time I talk, people think I'm stupid. Everyone thinks I'm a racist, and they don't understand anything about my culture. And he said, well, you're getting a really interesting lesson in prejudice then, aren't you? And I said I am. And he said, well, I'll tell you something, I much prefer southern prejudice and bigotry to northern prejudice and bigotry. He said southerners love us as individuals and people and hate us as a race; northerners love us as a race and hate us as individuals and people. He said, I think I can do something about that first thing; I'm not sure anybody

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can do anything about the second. It made me feel really good.

I'm actually the fifth straight first-born male of the same name to continually hold a law license in North Carolina from 1836 until today, so it was pre-ordained that I would be a lawyer, although my son, Joseph Blount Cheshire VI, was a professional surfer; now he's in videography. We finally had a smart one after 180 years. But I decided then that I wanted to be a criminal lawyer because I wanted to be able to fight against the power of government.

And that's really what criminal lawyers do. They're the most misunderstood people in our democracy. But, in my view, they're the most important, because they fight against government, taking the top off the worst people in saying they don't need representation, and before long you erode down to you. Like Martin Niemöller said in his famous lengthy quote, when they came for the Jews, I didn't say anything. When they came for the Catholics, I didn't say anything. When they came for the intellectuals, I didn't say anything. And then they came for me and there wasn't anybody else to say anything.<sup>121</sup>

I do have this enormous passion for the practice of criminal law. It's like a narcotic. My daddy made me be a civil lawyer for five years because he said criminal law was like heroin, if you did it once, you wanted to do it the rest of your life, but it would cause you all kinds of heartache. I found out being a civil lawyer wasn't so much for me, so I built my own criminal practice. I am passionate about it.

I was talking to Jerry Summers a minute ago and telling him about a case I tried when I was 30 with Bobby Lee Cook, which was one of the highlights of my life because I was a little kid and he was a legend. The Duke Lacrosse case was also one of the highlights of my life.

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<sup>121</sup> MILTON MAYER, THEY THOUGHT THEY WERE FREE (1955).

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Commentators have said that the Duke Lacrosse case is one of the most important criminal cases to have been heard in the last 20 years in America because it brought together the perfect storm of factors for the nation to examine. It had race, sex, class, politics, media, town and gown, and criminal law. The only thing it didn't have was religion. The American people got to see our system of justice in this enormous media frenzy that we've been talking to you all about, and they got to see it from investigation to exoneration. Unlike just seeing the trial, they got to see it all in our modern sensationalist press machine. They got to see our increasingly strident and dangerous sport of political correctness and class warfare.

But the most important thing they got to see was defendants who looked like the majority of them, because most of the time what we see in the news media are black people or Mexican people or really poor white people charged with crimes because they're easy targets and that's where our police go and that's what we see. They got to see defendants who looked like their son and looked like their brother or looked like their younger sister's husband. They got to see middle class and upper middle class white males being the subject of the criminal justice system, and they didn't like what they saw.

They had seen it a million times before. They had seen people be abused every day by the criminal justice system. But when they saw those nice-looking young white boys, they didn't like what they saw. And in many ways, it changed a lot of the culture of the way the American public looked at our criminal justice system and it changed it, I'm told by lawyers all over the United States, for the better.

The Duke Lacrosse case spawned the most amazing rush to judgment in any criminal case I think that there's been that's been publicized in our time. These boys were judged by almost every single media outlet in the world as guilty rapists. There were articles written about them

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internationally, there were shows about them internationally, and every one of them said that they were guilty. The prosecutor went out and branded them rapists, lied to the public, said things that simply weren't true, pandered to race, because he was running for re-election, and because he was a prosecutor, people believed him.

One of the reasons that this case was so awful for prosecutors-I've tried cases in 16 states and 85 of the 100 counties in North Carolina, I know a lot of prosecutors, and 99.9 percent of them that I know are wonderful, good, honest people-but what Mr. Nifong did was take advantage of the fact that the American people want to believe the State, they want to have faith in police, they want to have faith in their prosecutors. He went out there and took advantage of the American people's faith. And at the time he did it, none of these boys had lawyers, there was no one to respond, so he was just inundating the press. And much of the press --with all due respect to my friends that were on here this morning with me who I dearly love; I didn't know Al before, but, man, he's an impressive guy-and I do know Mark, and if you all haven't read his book, you should read it, it's one of the best books ever on the criminal justice system in America-but much of the press has a world view, and what happened in this case was that the prosecutor's story fit perfectly in their world view. In other words, a black woman who was poor and had children was raped by elitist white athletes at an expensive privileged school while she was trying to make a living for her children stripping. And the defendants were northerners living in a racially-divided southern city. How can it get better for that political-correct view?

I was hired by the captain, David Evans, and his family before there were any charges by anybody. I reached out to the prosecutor, who wouldn't speak to me. I reached out to news media. I met with David Evans. My son was an all-conference college lacrosse player. I raised only boys.

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I'm an only child. I went to an all-boy school. I met my wife the summer of my freshman year at Carolina. I don't know anything about women. But I know everything there is to know about boys. I coached every one of my kids' teams until they went off to school. And I knew Dave Evans. And when I talked to him for an hour and a half, I knew he wasn't guilty. I knew none of his teammates were guilty. I knew they were guilty of bad judgment, they shouldn't have had strippers in a house party, they shouldn't have been drunk, they shouldn't have done all those things, they weren't perfect kids, but I knew-because I knew this boy, he was me, this boy, I knew he didn't do it, and he was there the entire time.

The district attorney's statements led to marches [with people] holding banners that said "castrate them, kill them, lynch them". It was a terrifying atmosphere and it was fed by the media. So I tried as best I could to sit down with reporters from The New York Times, sit down with other people in the case and explain to them and try to turn them around, and I couldn't do it. I had a lot of contacts in the media at that point in time from my prior life. And I got upset because, for example, Houston Baker, who was a respected professor of English who moved to Vanderbilt, said about these boys before they were ever charged that there's a culture of silence that seeks to protect white male athletic violence. Lacrosse players at Duke are white, violent and drunken men who have been given license to rape and maraud and deploy hate speech. The proof was the only person that ever deployed any hate speech was the alleged victim one time, but that didn't make any difference. They are the embodiments of abhorrent sexual assault, verbal racial violence, and drunken male privilege loosed among us. The dean at Duke, William Chafe, compared the players to the men who lynched Emmett Till. Players were actually pointed to by professors at Duke, in

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small classes, and said 'he's one of the rapists'. It was out of control.

The DA said "I want to be part of the healing process." "One would wonder why an innocent person would need a lawyer", he said. "I will not let the image of Durham in the eyes of the world be a black girl being raped by a bunch of Duke athletes." There were lies and distortions of defense witnesses. I got angry. And when I get angry, sometimes I'm not always as sensitive or thoughtful as I should be. And I called a press conference-nobody had been indicted yet-and in that press conference there were maybe this many people there with cameras from all over everywhere. I've never seen quite anything like it except when James Hutchins was executed. And I looked out at them and I said, you people are lying to the American public, you're pandering to them, you're not doing your job, you're not trying to find the truth, you don't care what the truth is because it fits within your world view, but let me tell you something, it's going to be proven that you're lying to them, it's going to be proven it's not true, and you're going to be embarrassed, and it's time for you to open up your ears. It was the quietest room I think I've ever been in in my life.

I said two things to myself; the first one was, Lord, please let those boys really be innocent, and the second thing I said was, Joe, the last time you saw somebody wagging their finger at the public and lecturing was when Bill Clinton said "I did not have sex with that woman." So we put together a marvelous defense team. We've got several absolutely glorious criminal defense lawyers in North Carolina and I managed to bring them on. And I will also say to you all that do trial work or you law students who want to do trial work, whenever you have a co-defendant case or a multi-defendant case, the most important thing in the case is who's going to be your co-counsel, your other defendants or other plaintiff's counsel,



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because you've got to have somebody that's going to have your back, you've got to have somebody you trust, you've got to have somebody you can split up responsibilities to, and, more important, you've got to have people whose egos aren't going to step on the team and who don't mind if one person is getting the publicity when the other people might be doing more important work.

We put together that team, and it was a great team. It was basically, with one addition, the team we took on the road to defend obscenity against the National Obscenity Enforcement Unit. I can tell you a great story about that too but I'd have to use a word that... I won't tell you. It was the case in Nashville, Tennessee in which the jury didn't convict our sadomasochistic films, one which included a bodily function in the course of the sex, and the reason was that we had seven good ole boys from Tennessee on the jury and I told them in my closing argument, I don't know about you ladies, because I don't know anything about women, but when something appeals to sex in a man, there's a little bell that goes off, he knows it, so you guys know it. The judge is going to tell you this has to appeal to a prurient interest in sex, and I said that word prurient just means an ugly-based interest in sex but it still means an interest in sex. So if any of you guys found any of that interesting at all, you go back and tell the rest of the jurors and convict my client. If you didn't, it can't have appealed to a prurient interest in sex. Well, six of those boys just weren't going to go back and tell those women, so they hung the jury. We pled to a tax count. Then my co-counsel had a t-shirt made up that said the NOEU, the National Obscenity Enforcement Unit, can't convict S-H-T, which I thought was a little aggressive.

They used to say about me that the most dangerous place to be was between Cheshire and a camera. I never thought that was fair to me or the camera, but I had had a lot of experience with the media so it was my job to be the

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person that interfaced with the media. And for the next 16 months my partner, Brad Bannon, prepared this case for the most part, did what Pam did with Kobe Bryant, and I dealt with the media. I probably talked to the media during that period of time an average of five or six hours a day, and what I did was I reached out to reporters that I had identified that were fair, that I thought had open minds, and I reached out to reporters that I thought weren't, and I would sit down with them and I would talk to them.

I started with the local media because everything is always local, and then I moved to the national media. And we developed a message and we spent a lot of time reaching out to the reporters. We didn't use professional people to tell us what to do. In fact, one of our defendants hired a professional PR person and every time I was going to give a press conference she told me not to. And every time she'd say it, I'd say watch me, and we'd do it. In my experience if you're going to use a PR person, they'd better be somebody who knows something about trial practice and criminal law, because most PR people don't know much about much, except how to bill and how to tell you not to do things, and how to tell you when you do things. That's just my experience.

But things started turning for us. As we were doing our investigation, we would share our investigation with media people. And even before my client got indicted, the prosecutor had poisoned the well so badly that I started having press conferences every time he did and going after him and going after his facts and calling him out in every single way I possibly could. It became really effective. The reporters who trusted me, who had known me for years, particularly the local reporters-which is a reason why you try to build up the trust-said Joe would never be saying these things publicly if he didn't believe them. So they began to re-examine.

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As they began to re-examine, we helped them by giving them documents and information we had which proved that things could not have happened the way that the victim said that they happened, which proved that the prosecutors were not telling the truth. We got into the line-up procedures-this was the greatest line-up ever. There were 34 boys at the party. They took the team pictures of all 34 boys and put them on one piece of paper and handed it to the alleged victim and said you said three boys assaulted you, right? And she said right. Well, these are the boys that were at the house that night; tell us which three did it. So there was not a wrong answer. She made a horrible mistake in the people she picked out, by the way. There were a couple maybe she could have picked out that wouldn't have been as nice and good as the ones [she picked]. But we started doing that and we used open-minded reporters to begin to turn the media around.

It was incremental. It was really a bizarre situation because Fox News was our biggest supporter. Rush Limbaugh was our biggest supporter. I play in a member golf tournament with him every year-I played with him once in a foursome, I don't play with him-and he came up to me after the Duke case and said I just want to tell you that that job you did was just one of the greatest American things anyone has ever done. And I said, well, Rush, that's the only thing in the world that you and I could ever agree on.

So we did have these weird people out there that were supporting us that we used. I don't mind saying that we did use them, and they were helpful to us. As things were kicking up, the media started to turn. One of the media outlets that never turned was The New York Times, and there's an interesting reason in my view. I've always been a big fan of The New York Times, I still look at it every day, but they have a world view. They had reported their world view and they didn't want to differ from their

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world view. One day I was actually taking a few days off at the beach and the phone rang and it was Duff Wilson, who was the reporter. He said to me we're running a three-page article in The New York Times tomorrow morning on your case and wanted to know if you have any comment. I said, how long have you been working on it? He said, months. I said, you're calling me right now? So I stopped everything I was doing in my office and sent him about 150 pages that disproved everything he wrote. He never used a word of it.

As things started to get out, the media started to turn. Let me tell you something about the media-I don't know if Mark and Al will agree with this, but you've heard the old expression about a woman scorned? Well, there's nothing like a pissed off media person who's been lied to and believed it and reported it. And these people who had gone out and said all these horrible things and then began to be doubted and were called out on it were so mad that by that time they didn't really care what the facts were because the facts were our clients were innocent now. They turned on the prosecution and turned on them hard. But we still weren't making a lot of progress because there was a lot of judicial compliance with what the prosecutor was doing. They tried to gag me, for example, and you can see our response in the papers I gave you. We began to use the press conferences, and each investigative step that was analyzed that was put out, we would have a press conference and talk about it. They came out with the DNA and we had a big press conference. I didn't know much of anything about DNA, but we had a big press conference. It happened to be at Christmas vacation, and I started talking about the report and I allegedly have the Guinness Book of World Records now for having said the words vagina and penis on national television more than any human being that ever lived, so badly that they began to scroll on the bottom of all the national TV that this press conference is not suitable for young children. Not one of my finer

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moments, but I was in a moment myself so I didn't know what to do other than that.

We made a decision within the team that we were going to go to “60 Minutes.” Now, that was an enormous decision because “60 Minutes” is a pretty credible place, but we wanted to reach millions of people with the story. Before that, I also made what at the time was the same decision Pamela made and that is to take my boy out and let him make a statement. And, just as with her, it was the most controversial thing in the world when people found out that I was going to do it. The day he was arrested, he went in and was booked and I told everybody he's going to give a statement when he comes out and then I'm going to answer all the questions you want. So the whole media was out there in front of the jail. That was our backdrop, Al, the jail. An innocent man being arrested for a crime he didn't commit. When that boy walked out of there he was scared to death. And all I said to him was David, you're a smart boy, I don't want to tell you what to say, I don't want you to be scripted, I want you to say you're innocent, but other than that, you go back and search your heart and find four talking points and you just go out there and say it.

He went out there and he stood in front of that bank of cameras and his legs were shaking so hard that I didn't know that he'd be able to stand up, and he gave that statement that was so criticized before he gave it, and when he finished giving that statement, I promise you there wasn't a mother in America that thought he raped that woman.

I took questions about the case for an hour. I didn't let him take the questions about the case, of course. But we decided to go to “60 Minutes.” I would say within the course of our work with them we probably had 1,000 hours working with them for that show. My client's momma actually called me up and said we're not going to do the

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show, after we had done all this work. I said, then find yourself another lawyer.

We did “60 Minutes.” Those two shows on the Duke Lacrosse case came at the end of NFL playoff games, they had their biggest audience that they can possibly have, and when those shows were over, that case was still going on but it was done. I also learned a lot about the power of the media because I was up there in Annapolis preparing my client for his interview and I was staying in a hotel; I rode down to the bottom floor and the door opened-and at 60 Minutes, you don't deal with Ed Bradley and Lesley Stahl and those people, they do the interviews but you don't ever see them, you deal with producers-the doors to the elevator opened and there was Ed Bradley standing there, that I've been watching since I was a little boy. I looked at him and I said Ed Bradley, and he looked at me and he said Joe Cheshire. And I said how do you know who I am? And he said I've been watching you every day for 15 months.

Shortly after that, the DNA was discovered. I'll tell you this briefly for you law students and you lawyers too, let me tell you how the DNA was discovered. I can't give enough praise to my partner, Brad Bannon. He didn't know anything about DNA, and we knew we were going to get the discovery, and so he ordered on Amazon the three best textbooks on DNA before we got the discovery and he read them. And then we got the discovery and it was DNA. You know how DNA discovery is, it's huge, it's all the graphs, it's everything. I walked into the office at 7:30 on Monday morning; Brad was in the conference room. I walked in there and asked him what he was doing. He said he was looking through this discovery. I left at six o'clock that night; he was still in there. I came in the next morning; he was still there. I came in the next morning and the next morning; he was still there.

Then Friday afternoon he walked into my office and he said you're not going to believe what I found. There was

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DNA from nine men in and on this woman and none of them were Duke Lacrosse players. When when we hired the former FBI head of the DNA section to review Brad's work, the first question he said to me was where did this Brad Bannon get his Ph.D.? I said he's an English major from South Carolina and, as you know, that means he can't even really speak English. But he blew that case open. And the media helped us blow that case open.

The blogs were enormously helpful to us in the Duke lacrosse case. If you ever want to see a great blog and what the ABA awards for blogs, look at Durham-In-Wonderland by KC Johnson who is a law professor in New York. We learned more from that blog about our case than we learned about it any other way. LieStoppers was another one. But we read anti-blogs too. And we were able to understand our case using blogs, strangely enough, stepping outside the cocoon of our work, because preparation becomes a cocoon where you're with a certain number of people and you have a certain view and you're not really getting another view. You get another view on the blogs. And in the comments section, you realize how the crazies feel about the case. And we did try to also influence the crazies.

I have to tell you we enlisted our own crazies, so they told our story on the comments. And then we also were able to control the end story. It's a great story in and of itself how we got the attorney general to use the word "innocent." Once Mike Nifong was kicked off the case and disbarred, the attorney general took it all, and it was an amazing fight to get the word "innocent" used. And then we had to control the end gate and control the books that were written, and go so far as to control HBO who wrote this unbelievable movie they were going to put out that had a world view that was different than the truth. So we continue today to work on those details.

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The lesson from the Duke Lacrosse case is that the culture of winning in American criminal courts has got to be stopped. It's got to be a culture of justice and not winning. Open file discovery must be expanded and protected. We would have never known about the DNA if we hadn't had open file discovery.

One of the other lessons is that there are two justices in America—one for people with money and one for poor people. We need grand jury reform, we need to stand up to the cheaters without fear, because there's a great cost that comes when you try to take on the king, but when the king needs taking on, it's our duty to stand up and take him on, and we need more transparency in the criminal justice system.

It's been a great pleasure for me. I've enjoyed it a tremendous amount. I want to say to you that I've never been treated with the warmth that we were treated here, never been taken out to dinner and had a chance to sit with law students and talk with them and understand them and have a genuine personal professional experience with them and the other speakers, so that I get to make more friends, more colleagues. I thank you all very much for having me.