



June 29, 2017

Letter to the Editor re: Conestoga Hazing

Conestoga High School is an outstanding school. Located in the Tredyffrin-Easttown School District in Chester County, the school is consistently ranked as one of the best in the state and nation. The District Attorney's Office is proud to host Conestoga seniors as interns every year, and these students have proven to be bright, collegial, and well-spoken.

However, Conestoga has had a tough couple of years. A sexting scandal. A hazing case with the football team, ending with three juveniles pleading guilty. A female teacher's aide convicted of having sex with a male student. A male staff member charged with having sex with a female student.

The majority of Conestoga parents and the general public have been justifiably concerned. The majority of Conestoga parents and students have responded appropriately and responsibly. Other school communities in Chester County, both public and private, have dealt with criminal issues in their high schools in an honest and straightforward manner, corrected the underlying issues and moved on.

However, there is a small and very vocal minority of Conestoga football supporters who continue to misrepresent and distort the hazing case involving the football team. There have been factual misrepresentations, victim blaming and shaming, and a culture of denial. All of this conduct sends a message that victims should not report crimes and cases should not be prosecuted, which are very dangerous messages. There has been a repeated public demand for a detailed description of the investigation, including comments from some of the families actually involved in the cases, even though the cases are now finished. Such misinformation merits a response to the public to explain the actions of the District Attorney's Office and serves an important law enforcement purpose in protecting future cases.

Because of all of these factors, the District Attorney's Office requested and received permission from the court to publicly comment on the investigation to set the record straight regarding the Conestoga investigation. In addition, this description of the investigation will serve as a valuable tool for prosecutors and the public in understanding the difficulties in hazing cases, an often hidden area that is just now coming to light and needs to be addressed. See http://www.espn.com/espn/feature/story/_/id/17507010/otl-investigation-trend-sodomy-hazing (describing other hazing cases). That description of the investigation follows.

In 2015, there was a sexting prosecution involving students who were then in their freshman year at Conestoga. One of the accused juveniles was a 14 year old male freshman on the varsity football team. This juvenile was perceived by many of the older football players to be cocky and abrasive.

During the course of the sexting prosecution, the father of the accused juvenile reported to the high school that his son had been the subject of hazing months before by the Conestoga football team, including an incident involving a broomstick inserted into his son's rectum. As required by law, this report was given to the Tredyffrin Township Police Department, who consulted with the District Attorney's Office.

Our initial reaction was skeptical. This sounded like a parent who was looking for leverage in his own son's criminal case. In addition, a delayed report case is always difficult to prosecute. However, the allegation was serious. The Chester County Detectives were assigned to assist the Tredyffrin Township Police Department in investigating this allegation. They were instructed to interview the alleged juvenile victim and other players from the football team.

The victim was interviewed by a Chester County Detective who is specially trained to interview juveniles. The victim reported that he was ordered by senior football players to clean the locker room in his underwear. When he tried to leave, he was pushed back into the locker room. Two named senior players held him down. A third named senior player poked him with a broomstick, briefly penetrating his rectum. The detective reported that the juvenile was credible. He had appropriate and specific details. He also was reluctant to discuss the matter, because it was embarrassing.

Where possible, a case is not built on one victim's word.¹ Other witnesses were interviewed. Multiple teams of detectives were detailed to the investigation. Those detectives interviewed 38 players, students, and coaches.

Instead of hearing that nothing had happened, the detectives came back with substantial details. The detectives reported that there was a tradition called "No Gay Thursdays" at Conestoga, where things that the players normally considered "gay" were not considered "gay." Thus, the older players would drop their genitals onto the heads of younger players, make the younger players clean the locker room in their underwear, "bless" other players by striking their bare skin with open-handed slaps to leave a hand print, "grind" on other players' legs, engage in a practice called "vortexing" (involving sneaking behind another player and placing fingers into an intimate area), and other rituals. Virtually every member of the team interviewed confirmed "No Gay Thursdays" in graphic detail. Both the team members and the coaches stated that the players generally were unsupervised in the locker room, which allowed the practice to continue.

Regarding the assault on the victim, the detectives reported that they had multiple other students who independently confirmed the assault with the broomstick. These players reported that the victim was held down and poked with the broomstick. One of the other players reported that the one senior player was poking at the victim with the broomstick like the senior player was chipping away at ice. Those witnesses obviously could not confirm if there was any penetration; only the victim would be able to confirm that detail. The players were interviewed separately to prevent any contamination of their stories. The interviews were audio recorded and parents were present for the interviews with the students who confirmed the broomstick incident. These players were friends with the accused three seniors and did not like the victim, so their incentives were not to lie for the victim.

The detectives also attempted to interview the three accused senior players. The father of one of the players accused of holding down the victim simply refused to allow his son to be interviewed. The other player accused of holding the victim down denied any knowledge. The player accused of wielding the broomstick admitted, "I guess I yelled, 'Shove the broom up his ass.'" But he denied doing it himself.

The senior players and their lawyers were advised about the victim's report and corroborating details from other witnesses. They were told to tell the truth and accept responsibility if they expected any leniency.

¹ Although as a matter of law, the victim's word alone can be sufficient to charge and convict.

The defense was given every opportunity, both then and at other times, to admit that the incident with the broomstick occurred, but the players did not know if the broom penetrated the victim's rectum or never meant that to happen. Under all of the circumstances in this case, the entire incident could have been resolved then and there, with the same charges that the juveniles eventually pled to. The defense declined.

The case was reviewed by multiple levels of prosecutors and detectives. The case was assigned to two prosecutors: a former Marine JAG Corps prosecutor, who has dealt with criminal hazing cases in the military; and an experienced juvenile prosecutor. Every person who reviewed the case agreed that charges were warranted.

As is our customary practice, the District Attorney's Office next discussed charging options with the victim and his family. The options included: (1) charging the three juveniles with a felony sex crime, possibly as adults, which would have made the names of the charged juveniles public and all proceedings public; (2) charging the three juveniles with misdemeanors and summaries, such as assault and harassment, keeping the proceedings in juvenile court and the names confidential; or (3) not charging the juveniles at all. The victim and his family, having been through the juvenile system and aware of the nature of the case, stated a strong preference for the second option, a charge of misdemeanors and summaries. Taking into consideration all of the circumstances of the case, the District Attorney's Office honored the victim's request.

During these discussions, the District Attorney's Office also looked at the general issue of high school hazing. We discovered that similar hazing incidents were occurring across the United States. The national media recently has commented on the same issues that our research revealed. See above ESPN Report. We also discovered that the criminal offense of hazing did not cover high schools in Pennsylvania, so the senior players could not be charged with hazing.

In the interim, we received media inquiries. Reporters had heard from Conestoga parents about a player being sodomized with a broomstick. The media intended to run with the story, and already had started broadcasting preliminary reports. We told the media that we would make a statement that set forth the factual allegations and stop the rumor mill.

We held a press conference. We discussed the victim's allegations, the corroborating witnesses, the "No Gay Thursday" culture, the criminal charges, and the lack of a hazing law covering high schools. The District Attorney's Office was publicly criticized in equal parts for not being harsh enough and being too harsh.

The District Attorney's Office turned over to the defense the extensive results of the investigation. There were approximately 500 pages of reports and 20 DVDs of recorded witness interviews.

We expected that the case would go to trial by the summer of 2016, because it was in the juvenile system. The prosecution was fully prepared to try the case. We also wanted the case resolved in the summer before the witnesses went to college. However, the defense repeatedly continued the trial, legitimately citing a health issue for one of the defense lawyers. Nevertheless, delay generally works to the advantage of the defense and the disadvantage of the prosecution.²

The backlash from the Conestoga football loyalists was pronounced and immediate. A few of the responses included: (1) boys will be boys, this happens everywhere; (2) the victim is a bad kid, nobody likes him or his father; and (3) complete denial - - nothing happened, not "No Gay Thursdays," not the broomstick incident, nothing. They attacked the police and prosecutors. They did this in public meetings and social media.

² After the charges were filed, two of the accused juveniles were offered a "consent decree", which would have allowed them to admit to their conduct but not be convicted of any offenses if they stayed out of trouble. They declined. The father of the player who declined to allow his son to be interviewed announced to the media his refusal to take advantage of the consent decree option.

We pointed out: (1) this went way beyond “boys being boys”; (2) blaming the victim was inappropriate, and the fact that the players did not like him was evidence of motive; and (3) there were independent witnesses.

The Tredyffrin-Easttown School District (the “School District”) took independent actions. They accepted the resignation of the head football coach, but subsequently hired him back to Conestoga in a security job. The School District fired the rest of the coaches. These decisions were made solely by the School District, based on the School District’s own internal investigation into “No Gay Thursdays.”

The School District expelled the victim based on the sexting case. The School District suspended but did not expel the three senior football players.

The School District also decided to sue the victim. They claimed that the victim did not officially live in the district and now owed them over \$10,000. The School District lost this suit and was ordered to pay for the victim’s education at a different school.

Also during this interim period, a video of the victim surfaced. Another football player/student from Conestoga caught the victim on a train and told him that he was threatening the future of the three senior players. In that conversation, the victim initially stated that his father told him what to say, then went back to saying the incident did happen. This interaction was recorded, including both the victim’s statement about his father and the victim’s confirmation that the incident did happen. The attorney for the student or students who participated in recording the interaction alerted the District Attorney’s Office to the existence of the video, but realized that the recording was a probable Wiretap Act violation, and thus requested immunity for the students as a condition of producing the video to the District Attorney’s Office. The District Attorney’s Office agreed not to prosecute the recording students and immediately turned the video over to the defense lawyers, with the caveat that that the video was a probable Wiretap Act violation and had to be kept secure.

The prosecutors and detectives reviewed the video. The video looked like a circumstance that prosecutors see often in criminal cases, which is an attempt by defendants’ friends to pressure a victim into providing an inconsistent statement. This is part of the “Stop Snitching” culture that exists in many places, from Philadelphia to Conestoga, from drug gangs to athletic teams. It is a concerted attempt by individuals or a community to derail the criminal justice process. Any kid caught alone and by surprise might blurt out anything when confronted by defendants’ friends. In this case, the recording loses steam when the victim goes back to saying that the incident happened. The video made the prosecution more difficult, but did not change our view of what happened in the case (particularly because the video includes the victim standing by the incident and the facts that the incident was still reported by independent witnesses). Somebody then gave the video to the media for public dissemination, possibly illegal conduct. This was another apparently coordinated tactic to attempt to discredit the victim.³

The other senior players who had reported witnessing the incident were not looking forward to testifying against their senior team-mates, but they remained steadfast in their testimony. They faced enormous public pressure from the football loyalists to recant and prosecutors were repeatedly assured that they would recant. Again, the “Stop Snitching” culture at work. However, these young men had the courage and parental support to remain truthful.

The case was finally set to go to trial in early 2017. Every prosecutor and detective on the case continued to believe that the incident took place.

³ The father of the charged juvenile who refused to allow his son to be interviewed in the investigation also publicly was quoted by the media claiming that the District Attorney’s Office was delaying the case. This claim was false. This attack was aimed at the specifically at the prosecutors, rather than the victim.

As often occurs as a trial approaches and all of the parties have had an opportunity to review every bit of discovery and grapple with the potential ramifications of trial, the defense presented a plea proposal. The lawyers for the players asked if their clients could plead guilty to the summary offense of harassment.

We consulted with the victim. The victim had been through public and private hell, ostracized by the football supporters, the school, and his former team-mates. The victim said that he would accept the plea as long as the senior players admitted what they did and took responsibility.

The issue of penetration remained unresolved. The victim maintained that it happened and was found credible by the investigators. The charged juveniles could credibly admit that they held the victim down and poked him with a broom, but never intended to penetrate him or did not believe that they had penetrated him. At the victim's original request, the District Attorney's Office had never charged the felony offense involving penetration, so it became a moot point in the plea discussions.

At the end of the day, the charged juveniles agreed to plead guilty to harassment. They admitted that two of the players held the victim down and the third player poked the victim with a broomstick. The charged juveniles admitted that it was their intent to scare the victim. All of these admissions could have been made at the beginning of the investigation.

The debate was whether to remain totally silent on the nature of the poking, to say "below the waist," or to say "in the leg." The defendants initially refused any mention of the broomstick. However, they then admitted the broomstick and requested the "in the leg" language. As in many plea agreements, neither side gets exactly what they want.

The victim was consulted. He agreed that the pleas to harassment and the stated facts in support of the plea were sufficient. The judge overseeing the case accepted the guilty pleas.

In conclusion, to answer the outstanding questions from the case:

1. Did "No Gay Thursdays" happen as a regular hazing ritual with the Conestoga High School football team? Yes, as confirmed by the football players and the School District's internal investigation.
2. Was the locker room generally unsupervised, allowing "No Gay Thursdays" to continue? Yes, as confirmed by the coaches, players, and the School District's internal investigation.
3. Did two larger senior players hold the victim down as part of "No Gay Thursdays"? Yes, as stated by the victim, as confirmed by other players, and as admitted by the charged juveniles.
4. Did one of the charged juveniles poke the victim with a broomstick in the lower half of the victim's body while the victim was being held down by two larger and older players? Yes, as stated by the victim, confirmed by other team members, and as admitted by the charged juveniles.

What would you think if you walked in and saw that being done to your son? What would you think if it was done to your daughter?

5. Did the broomstick penetrate the victim? The victim says yes. And only he would know.
6. Partially as a result of this case, was Pennsylvania law amended to make the offense of hazing applicable to high schools? Yes. And we understand that the new Conestoga football coach is

doing an excellent job of both coaching and supervising the student-athletes, making sure that no more hazing takes place.

7. Have the charged juveniles and the victim been punished appropriately in the criminal justice system? The District Attorney's Office believes that they have been punished appropriately. They all were juveniles when the conduct happened. The victim admitted his role in the sexting. The charged juveniles admitted their roles in the hazing. All of their charges were kept in the juvenile system. Having accepted responsibility, they all deserve to be left in peace to continue with their lives.

These cases are difficult on a victim, the accused juveniles, and the community. Because these cases involve some nuances and judgment calls, such cases are difficult for anybody outside of the criminal justice world to decipher. They cannot be reduced to one line or one paragraph. Anybody reviewing hazing prosecutions from across the United States would see the same welter of confusing circumstances and mixed emotions within the community, as well as the historically difficult nature of hazing prosecutions.

At the end of the day, the prosecutors, detectives, defense lawyers, and the court all did their jobs in this case with integrity and fairness. The School District, victim, convicted players, students, and community all must deal with the consequences of this case and the other Conestoga cases. As with all criminal justice matters, we seek the truth, which is not always pretty and is seldom neat and orderly.

Chester County remains one of the best and safest places to live, work, raise a family, and get an education in the United States. That is in no small part because we take criminal issues seriously, try to protect victims (especially children and other vulnerable victims), and prevent criminal activity from taking root. Our schools and our communities play a vital role in that equation. We are proud to stand on this record of integrity.

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