■ THE ACADEMY ■

Liars for the Cause

When scholars ditch the truth

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JOSEPH J. ELLIS may never have been in combat in Vietnam, but he is certainly getting shelled now. In June, the *Boston Globe* revealed that Ellis, a professor of history at Mount Holyoke College and a Pulitzer Prize-winning author, is also a distinguished writer of fictions about himself. He told his students that he served in Vietnam; he didn't. He told them that when he got back home he became an antiwar activist. Not so. He said that he had done dangerous civil-rights work in Mississippi—another lie. He told a reporter that he had scored the winning touchdown for his high-school football team in the last game of his senior year. The *Globe* discovered that Ellis wasn't on the team *and* that the team had lost its last two games that year anyway.

The *Globe* described its own report as an "explosive revelation," and it has been taken as such. The administration at Mount Holyoke has issued a statement criticizing Ellis and launched an investigation of his lies to students and reporters. Colleagues have said they feel "betrayed" by him. Officials at both the American Historical Association and the American Association of University Professors have condemned him in the *Globe*. Historian David Garrow took to the paper's op-ed page to write that Ellis should be "barred from ever again teaching history" because of this "horrible scandal." The call has echoed far and wide. "Ellis should go," editorialized the *Los Angeles Times*.

The criticism of Ellis has been so severe that it has inspired a bit of a backlash. His defenders note that nobody has questioned the accuracy of his work as a historian. A judgment of Ellis's professional conduct, they say, should weigh his book on John Adams more heavily than his attempts to impress the ladies at Mount Holyoke. On one point, though, everyone in the debate—academics and journalists, critics and defenders—seems to agree: An academic who lies about his professional field of expertise is guilty of a serious offense and deserves condemnation.

It is a reasonable, indeed justified, view. It has everything going for it, in fact, except that neither the media nor the academy is willing to act on it—at least when the lying in question serves liberals' political objectives. In two recent cases of scholarly misconduct of the most public sort, the exposure of this misconduct was greeted, mostly, with silence.

In 1989, over 400 historians signed a legal brief to the Supreme Court as it was considering a case on abortion law (*Webster* v. *Reproductive Health Services*). The historians, unsurprisingly, urged the Court to reaffirm *Roe* v. *Wade*'s holding that the Constitution protects a

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right to abortion. Their brief argued that the common law protected this right at the time the Constitution was adopted. (Yes, really.) Further, it argued that when abortion was later restricted it was for reasons having nothing to do with anyone's view that a fetus had a right to life. Abortion was restricted, rather, to further the self-interest of doctors and, of course, to keep women down.

The brief was a complete fraud. In truth, the law always restricted abortion, and the 19th-century movement to tighten the law sought to protect what it regarded as fetal life. And the brief didn't come by its bad history honestly. The truth was readily available. The sources on which the brief purported to rely contradicted its argument; so did the published work of many signatories to the brief. For example: The brief

praised *Abortion in America* ("widely regarded as accurate and comprehensive") by James Mohr, a signatory, and cited it to support the claim that abortion was a "common-law liberty." Most of the cited pages in the book are irrelevant to the claim, but on one of them (page 3) Mohr writes, "After quickening, the expulsion and destruction of a fetus without due cause was considered a crime."

Fraudulent though it was, the historians' brief was extremely influential. Press coverage in 1989 tended to assume the accuracy of its claims. Walter Dellinger, later to serve in the Clinton Justice Department, spent most of an article in the *The New Republic* uncritically summarizing it. Laurence Tribe and Ronald Dworkin, the preeminent liberal legal theorists of our time, relied on the brief's history in their books on abortion. A few writers called attention to the fraud: Gerard Bradley in *First Things*, John Finnis in *Academic Questions*, and yours truly in NR ("Aborting History," October 23, 1995). But nobody else has said anything. Prominent signatories—including Sean Wilentz and Paul Starr of Princeton, Barbara Ehrenreich, Tony Judt, Alan Charles Kors—have never repudiated it or even faced much pressure to do so. (Mohr, at least, refrained from signing the revised, but also fraudulent, version of the brief that was submitted to the Supreme Court in a later abortion case.)

Since the historians' brief, there has been an even more egregious case of scholarly duplicity in the courtroom: the case of Martha Nussbaum, a classicist, moral philosopher, law and divinity professor, and general-purpose academic celebrity at the University of Chicago. In the early '90s, Nussbaum was an expert witness in a high-profile court battle over "gay rights." Colorado voters had passed a state constitutional amendment barring localities from enacting laws to grant preferences or ban discrimination based on sexual orientation. Gay activists promptly sued to have the law struck down. In the course of doing her part to help their effort, Nussbaum lied under oath.

The activists argued, among other things, that the amendment had to be thrown out because it was based on sectarian views. Academic witnesses for the state (notably Finnis and Princeton's Robert George) noted, against this argument, that important pre-Christian philosophers such as Plato opposed homosexual conduct on nontheological grounds. In order to prove the contrary proposition—to prove, that is, that no great pre-Christian Mediterranean civilization or classical Greek or Roman thinker had ever condemned homosexuality—Nussbaum had to misrepresent both the ancient thinkers and the modern commentaries on them, including her own published work.

George quoted a book by classicist Kenneth Dover, for example, noting that Socrates "condemn[ed] homosexual copulation." Nussbaum falsely claimed that Dover had revised his view of the matter in a postscript to the book's second edition. Finnis introduced another scholarly source, a book by David Cohen that noted that Athenian society had disapproved of homosexual conduct. In response, Nussbaum claimed that Cohen was "not a classicist," said that he "has never been employed by a department of classics," and implied that he did not know Greek. None of these assertions is true. Cohen told Finnis that a few years before the trial, he had answered Nussbaum's questions about his scholarly credentials in a long conversation.

Nussbaum's most flagrant falsification concerned an issue of translation. Plato had classified homosexual activity as "*tolmema*," and Finnis had cited sources that took the word to denote a "crime" or "enormity." Nussbaum testified not merely that there were more appropriate translations, but that Finnis's translation was clearly wrong. The word actually meant something nonpejorative, such as "venture" or "deed of daring," she said.

The authoritative dictionary in the field is Liddell, Scott & Jones's lexicon. It includes the pejorative translation "shameless act." So Nussbaum submitted an affidavit that said that a lexicon by "Liddle [sic], Scott" was "the authoritative dictionary relied on by all scholars in this area." The words "& Jones" were whited out. Without those words, Nussbaum's reference was to a long-outdated version of the lexicon that did not include the pejorative term. But that version is not in fact "authoritative"; Nussbaum uses the newer one in her own published work.

As in the case of the historians' abortion brief, Nussbaum's misrepresentations did attract criticism. Professors Bradley and Finnis blew the whistle. Daniel Mendelsohn wrote an article for *Lingua Franca*, the academic review, which while sympathetic to Nussbaum's political views cited evidence establishing that her testimony was "perjurious." Mendelsohn's article probably hurt Nussbaum's reputation, but otherwise she has faced no consequences for her misconduct.

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The contrast to the Ellis case is striking. Ellis, so far as we know, never misled anyone about his subject matters. But Nussbaum and many of the historians who signed the abortion brief put their scholarly authority behind what they must have known to be falsehoods. (Not all the historians who signed the brief knew it was fraudulent; some no doubt signed it relying on the authority of Mohr and other acknowledged scholars in the field.) They did so, moreover, to affect public policy by corrupting judicial proceedings. But apparently the moralists who have gone after Joseph Ellis are not concerned by perjury or offenses close to it. Nussbaum and the historians were only lying about sex, after all.

Neither Nussbaum nor any of the historians who signed the brief have been disciplined by the colleges and universities that employ them. None of them has faced investigations. No professional association has taken notice of these episodes. David Garrow has written no outraged op-eds about them.

Shortly after the Ellis story broke, *The New Republic* ran an editorial comment taking Ellis to task for sinning against the "historical truth" he "is supposed to cherish." Martha Nussbaum is still a valued contributor to the magazine. **NR**