

Plaintiffs'  
**EXHIBIT No. 3**

1  
2  
3  
4  
5  
6  
7  
8  
9

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
CIVIL ACTION NUMBER 1:07-CV-00953  
RYAN McFADYEN, et al.,  
Plaintiffs,  
v.  
DUKE UNIVERSITY, et al.,  
Defendants.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19

DEPOSITION OF CHRISTOPHER KENNEDY  
DURHAM, NORTH CAROLINA  
FRIDAY, DECEMBER 2, 2011, 1:09 P.M.

20  
21  
22  
23  
24  
25

The Deposition of CHRISTOPHER KENNEDY, taken pursuant to notice before KAREN K. KIDWELL, a Registered Merit Reporter and Notary Public in and for the State of North Carolina, on December 2, 2011, at Ekstrand & Ekstrand, LLP, 811 Ninth Street, Suite 260, Durham, North Carolina, at 1:09 p.m.

1	INDEX		
2	CHRISTOPHER KENNEDY		Page
3	By Mr. Ekstrand		9
4	E X H I B I T S		
5	No.	Description	Page
6	Kennedy 1	Email string beginning with	25
7		3/31/2006 email, Wasiolek to	
8		Kate Hendricks, Bates stamped	
9		Pls.#8180-8187	
10	Kennedy 2	3/23/06 Fax with attachment	45
11		Nontestimonial Identification	
12		Order, Bates stamped Pls.	
13		22368 and 8361-8370	
14	Kennedy 3	Duke University, Robert Dean,	50
15		Matthew Drummond, Aaron Graves	
16		and Gary N. Smith's First	
17		Requests for Production of	
18		Documents to Plaintiff Ryan McFadyen	
19	Kennedy 4	5/3/2006 Duke University News	66
20		& Communications, Statement by	
21		President Richard H. Brodhead	
22		on Duke Men's Lacrosse Team,	
23		Bates stamped Pls. 10219	
24			
25			

## Durham, NC

E X H I B I T S (Continued)			
	No.	Description	Page
1			
2			
3	Kennedy 5	Page entitled Please Come	71
4		Forward with Pictures, Bates	
5		stamped Pls. 12628	
6	Kennedy 6	Copy of CD-ROM, video clip, to	72
7		be produced by Plaintiff's counsel	
8	Kennedy 7	Copy of picture, Bates stamped	73
9		Pls. 22622	
10	Kennedy 8	Copy of picture, Bates stamped	73
11		Pls. 22433	
12	Kennedy 9	Writing by Christopher	76
13		Kennedy, Bates stamped	
14		Pls.22623-22633 and 22480	
15	Kennedy 10	Email string beginning with	86
16		4/4/2006 email, Russ to	
17		Council, Bates stamped Pls.	
18		22494-22495	
19	Kennedy 11	Operations Report, Duke	88
20		University Police Department,	
21		dated 5/1/2006, Bates stamped	
22		Pls. 12748	
23	Kennedy 12	Durham Police Department	92
24		statement, Bates stamped Pls.22477	
25			

E X H I B I T S (Continued)		
No.	Description	Page
Kennedy 13	www.justiceforher.blogspot.com documents dated 4/1/2006, Bates stamped 22481-22489	92
Kennedy 14	MotivationalBuck.com document, Bates stamped Pls. 21463	92
Kennedy 15	4/20/2006 Article entitled Lacrosse publicity 'Unwished' For Duke, Durham, Brodhead says by WRAL, Bates stamped Pls. 22492	97
Kennedy 16	6/27/2006 Duke University News & Communications memo, Updated: Statement on Release of Sealed Warrant and Cancellation of Men's Lacrosse Season from President Brodhead, Bates stamped Pls. 22358	103
Kennedy 17	Duke University Police Department Incident/Investigation Report dated 3/30/06, Bates stamped Pls. 22515-22516	122
Kennedy 18	Email string beginning with 3/27/2006 email, Pressler to spressler, Bates stamped Pls. 22346-22347	122



## Durham, NC

E X H I B I T S (Continued)		
No.	Description	Page
Kennedy 19	Distinguished Leadership and Service Awards recipients, Bates stamped Pls. 22518	126
Kennedy 20	Article entitled A Duke Conversation, Making a Difference, Bates stamped Pls. 22478-22479	126
Kennedy 21	Typewritten letter written by Stephen Bryan, Bates stamped Pls. 8441	129
Kennedy 22	2/22/2010 Letter, Kennedy to Ms. Nkonye Iwerebon, Dean of Admissions, Columbia University School of Law, one page	140
Kennedy 23	5/1/2006 email, Burness to Chalmers, Bates stamped Pls. 22523	149
Kennedy 24	4/25/2006 email of Mark Gottlieb with Herald-Sun article, Bates stamped Pls. 22411-22413	151
Kennedy 25	Independent Weekly newspaper article entitled, Flacking up, Duke lacrosse case becomes PR battle, Bates stamped Pls. 22490-22491	152

1                                    A P P E A R A N C E S

2    ON BEHALF OF THE PLAINTIFFS:

3    EKSTRAND & EKSTRAND, LLP

4    BY:    BOB EKSTRAND, ESQUIRE

5            STEFANIE A. SPARKS, ATTORNEY

6    811 Ninth Street

7    Suite 260

8    Durham, NC 27705

9    (919) 416-4590

10    sas@ninthstreetlaw.com

11

12    ON BEHALF OF THE PLAINTIFFS IN THE CARRINGTON CASE:

13    COOPER & KIRK, PLLC

14    BY:    DAVID H. THOMPSON, ESQUIRE

15    1523 New Hampshire Ave., N.w.

16    Washington, D.C. 20036

17    (202) 220-9659

18    dthompson@cooperkirk.com

19

20    THOMAS, FERGUSON & MULLINS, L.L.P.

21    BY:    PHILIP A. MULLINS, IV, ESQUIRE

22    119 East Main Street

23    Durham, NC 27701

24    (919) 682-5648

25    mullins@tfmattorneys.com

1                   A P P E A R A N C E S (CONT'D)  
2  
3    ON BEHALF OF THE DEFENDANT DUKE UNIVERSITY:  
4    ELLIS & WINTERS, LLP  
5    BY: RICHARD W. ELLIS, ESQUIRE  
6         PAUL K. SUN, JR., ESQUIRE  
7    1100 Crescent Green Drive  
8    Suite 200  
9    Cary, NC 27518  
10   (919) 865-7000  
11   dick.ellis@elliswinters.com  
12  
13   ON BEHALF OF THE DEFENDANTS DUKE UNIVERSITY HEALTH  
14   SYSTEM, INC. and TARA LEVICY:  
15   YATES, McLAMB & WEYHER, L.L.P.  
16   BY: KATHERINE E. FISHER, ATTORNEY  
17   421 Fayetteville Street  
18   Suite 1200  
19   Raleigh, NC 27601  
20   (919) 835-0900  
21   kfisher@ymwlaw.com  
22  
23  
24  
25

1                   A P P E A R A N C E S (CONT'D)  
2  
3       ON BEHALF OF THE DEFENDANT DNA SECURITY, INC.:  
4       BROOKS, PIERCE, McLENDON, HUMPHREY & LEONARD, L.L.P.  
5       BY:   BRIAN J. McMILLAN, ESQUIRE  
6       2000 Renaissance Plaza  
7       230 North Elm Street  
8       Greensboro, NC  27401  
9       (336) 271-3168  
10      bmcmillan@brookspierce.com

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 FRIDAY, DECEMBER 2, 2011, DURHAM, NORTH CAROLINA

2 P R O C E E D I N G S

3 CHRISTOPHER KENNEDY

4 being first duly sworn, testified as follows:

5 EXAMINATION

6 BY MR. EKSTRAND:

7 Q. Okay. Could you state your name and tell  
8 us where you're from?

9 A. Christopher Kennedy. I was born in  
10 Buffalo, New York.

11 Q. Okay. And where do you live now?

12 A. Durham, North Carolina.

13 Q. How long have you lived in Durham?

14 A. Since 1973.

15 Q. Okay. Before we get into that, is there  
16 anything -- for the record, is there anything that  
17 would cause you to be unable to understand my  
18 questions or answer them fully today?

19 A. Not that I'm aware of.

20 Q. Okay. Except for my poor syntax, nothing  
21 you know of.

22 A. Right.

23 Q. All right. Well, let's get to it. You  
24 moved to Durham in 1973?

25 A. Uh-huh.

1 Q. Okay. Is -- where did you go to  
2 undergraduate and tell us a little bit about your  
3 educational history.

4 A. I was educated by Hungarian Benedictine  
5 monks in high school six days a week, and I went to  
6 the Georgetown University and got the Jesuits and  
7 then got a bachelor's degree and master's degree  
8 there and then came here for a Ph.D.

9 Q. Okay. So when you came to Duke, it was to  
10 study?

11 A. It was as a graduate student, right.

12 Q. Okay. In what department?

13 A. English.

14 Q. And what did you concentrate on, what  
15 area?

16 A. Anglo-Saxon literature.

17 Q. Yes. That involves what, just for --

18 A. That's old English. That's the earliest  
19 literature in English, not a form of English that  
20 many people would recognize today.

21 Q. Okay. And how long did it take you to get  
22 your degree at Duke?

23 A. I got it in '79, so six years.

24 Q. And that was a Ph.D. program?

25 A. Uh-huh.



1 Q. All right. So while you were studying,  
2 did you do anything besides study?

3 A. Well, I was -- up until 1977, I was a  
4 teaching assistant, so I taught. And then in 1977, I  
5 started in the Department of Athletics.

6 Q. Okay. And what did you start as?

7 A. The academic advisor for football and  
8 men's basketball.

9 Q. Okay. That's big jobs these days. It  
10 takes ten people to do those now, right?

11 A. That's exactly right.

12 Q. All right. What do you -- what are  
13 your -- what are your thoughts, having had that  
14 perspective of big time athletics then, at least what  
15 became big time athletics, what was your perception  
16 of athletics and its role in university and our  
17 culture at that point?

18 A. I think that -- that the external  
19 trappings of college athletics have changed  
20 enormously in the last 30 years. But I don't think  
21 that the fundamental value of it, which we're trying  
22 hard to preserve, has changed since Whizzer White, or  
23 since I played or since -- and that fundamental value  
24 is that somebody like Stefanie Sparks comes to Duke  
25 to play lacrosse and has an experience that's a great

1 athletic experience, but that's folded into a much  
2 larger experience that fulfills the role of the  
3 institution, which is to educate, and to educate in  
4 all kind of ways, not just in the classroom.

5 And so that when that person goes through  
6 this experience at the highest level of college  
7 athletics and the highest level of college academics,  
8 they emerge at the other end of that with a degree,  
9 but also with a sense of themselves that's changed  
10 and, you know, a sense that if I can do this, I can  
11 do anything. This has been a vastly empowering  
12 experience, and I think that's been true for a  
13 hundred years.

14 Q. And so your -- your thinking about this is  
15 that those skills are acquired through athletics?

16 A. I think that's part of the way those  
17 skills are acquired. Five years after you graduate,  
18 you don't remember the score of the Clemson game in  
19 your junior year and you don't remember the physics  
20 problems that you -- or equations that you studied so  
21 hard for for that exam. The actual details aren't as  
22 important as the preparation and the commitment and  
23 the dedication and the hard work that goes into  
24 mastering them. And those are parallel experiences.  
25 It isn't just athletics that does it, but they play a

1 role.

2 Q. Okay. So is it fair to say, in your view,  
3 that for a student athlete, that the athletics is --  
4 is central to the educational experience and mission?

5 A. I think that if you -- I think that at  
6 Duke, it is. I think if you run it right, it can be.  
7 It isn't always. It isn't nationally.

8 Q. At Duke it is, you say?

9 A. Yes.

10 Q. And for the members of the 2006 lacrosse  
11 team, was it?

12 A. Ultimately, yes. Ultimately, yes.

13 Q. Okay. Now, when you say "ultimately,  
14 yes," you were thoughtful, and I wondered what you  
15 were thinking.

16 A. I think that their experience in that --  
17 for that year, really, in some ways overshadowed what  
18 their normal life would have been like; but in some  
19 ways, sort of sharpened it, in that, I remember them  
20 talking in that spring about how, you know, there are  
21 so many things we control. And one of the things  
22 that we can control is how we perform in the  
23 classroom this spring, because there was all this  
24 other stuff was spinning around and that they had no  
25 way of influencing it at all.

1                   And so it sort of focused their  
2 concentration on that, on deriving what they could  
3 from the things that they could really -- they really  
4 had in front of themselves. So it was sort of a --  
5 there was sort of a tension between the -- the  
6 educational experience that they continued to try and  
7 get and the, you know, that maelstrom they found  
8 themselves in.

9                   Q.    Okay. How persuasive in your -- well, did  
10 you have an opportunity to assess how pervasive that  
11 maelstrom was?

12                  A.    You mean the whole universitywide,  
13 communitywide?

14                  Q.    For them, for the team?

15                  A.    For them? Yeah. I mean, I -- I spent a  
16 lot -- a lot of time talking to a lot of them  
17 throughout that whole period for various reasons.

18                  Q.    Okay. And I think -- we'll get into that  
19 later. I think we'll just bookmark that because I  
20 want to get to your experience with them as  
21 individuals. But let's go back and talk more about  
22 some structural things.

23                            You were at the university, and you were  
24 overseeing football and basketball in '77?

25                  A.    Academics, yes.

1 Q. Okay. And then you had your Ph.D. And  
2 what did you do after you got your Ph.D.?

3 A. I thought I was going to go off and teach  
4 somewhere, but I stayed.

5 Q. Okay.

6 A. I still teach, but I stayed in the  
7 athletic department.

8 Q. Okay. Now, you are an adjunct professor  
9 in the English department?

10 A. Correct.

11 Q. How long has that been true?

12 A. Since 1980. I'm not sure. '81 or '82.

13 Q. What do you teach?

14 A. This semester, I'm teaching a course on  
15 writing about sports; but usually, I teach poetry.

16 Q. Poetry. What era?

17 A. I teach a survey.

18 Q. Okay. And do you do that once a year, or  
19 twice a year?

20 A. Every fall.

21 Q. Okay. And what are your other -- well,  
22 actually, you -- so when you started to -- when you  
23 stayed at Duke, what did you do? What was your role?

24 A. Well, I was the -- I maintained that role  
25 as academic guy for football and basketball, which

1 expanded to include all the other sports. And then  
2 my responsibilities over the years just gradually  
3 expanded.

4 Q. All right. So over the years from that  
5 time on after you graduated till now, what role --  
6 were you always within the athletic department?

7 A. Yes.

8 Q. Okay. And you were always teaching  
9 English, also?

10 A. Uh-huh.

11 Q. So those two stayed stable?

12 A. Correct.

13 Q. And within the athletic department, where  
14 did you begin in terms of your status and your role,  
15 your job description? What were you when you  
16 started?

17 A. Well, I was the academic advisor for those  
18 two teams, and then I acquired other teams as, you  
19 know, in the next couple of years.

20 Q. Okay. And what are you -- what is your  
21 designation -- actually, what was your designation,  
22 was your title in 2006?

23 A. I think I -- I think it was senior  
24 associate director of athletics.

25 Q. And again, what did that role --



1           A.    Somewhere in there, I became -- I went  
2   from associate athletic director to senior associate,  
3   and I think it was prior to that.

4           Q.    Okay.  So in terms of the organizational  
5   chart within the athletic department, where would --  
6   where did that put you?

7           A.    It put me right below Joe Alleva.

8           Q.    And who is Joe Alleva?

9           A.    Joe Alleva was the director of athletics.

10          Q.    And where is he now?

11          A.    He's at Louisiana State University.

12          Q.    Okay.  So is it fair to say you were the  
13   number two administrator in the chain of command?

14          A.    Yes.

15          Q.    All right.  And you and Joe shared an  
16   office space in the Cameron Indoor Stadium?

17          A.    We had a -- yeah, we had a suite.

18          Q.    A suite.  Okay.  With respect to the  
19   lacrosse team, did you have an official position or  
20   an official responsibility at that time?

21          A.    Well, there were -- the nonrevenue sports  
22   were divided into -- into two, and half of them  
23   reported to me, and half reported to Jacki Silar.

24          Q.    Okay.

25          A.    And lacrosse reported to me.

1 Q. Okay. So when you say lacrosse reported  
2 to you, what did that mean, day to day? What  
3 would --

4 A. It could mean anything. It's anything  
5 from facilities to budgets to dealing with problems  
6 that come up, to scheduling, to figuring out how to  
7 pay guarantees, just everything that goes into  
8 running a program.

9 Q. Okay. So is it fair to say that you were  
10 the administrator who had oversight over the lacrosse  
11 program?

12 A. Directly, yes.

13 Q. Did anybody else have direct oversight  
14 over the lacrosse program that was in the  
15 administration?

16 A. Well, I mean, Joe through me. I mean,  
17 he's ultimately responsible for everything.

18 Q. And then above Joe, where does the chain  
19 of command go, or did it at that time?

20 A. At that time, I believe he reported to  
21 Tallman Trask.

22 Q. And who did Tallman Trask report to?

23 A. President.

24 Q. So the chain of the command in the loose  
25 sense of the phrase would be from you to Joe, to

1 Tallman Trask to Rich Brodhead?

2 A. I believe that's correct.

3 Q. Okay. Let me just ask you, I want to get  
4 into that -- in your role in which you experienced  
5 with respect to the lacrosse case in a minute. But  
6 just in terms of background on things that may be out  
7 there and where they may be, we're always interested  
8 in knowing what documentation exists of events,  
9 correspondence, communication.

10 How did people communicate with you in  
11 connection with the lacrosse case? How did they get  
12 word to you and you got word back to them about what  
13 was happening?

14 A. A lot of phone interchange. And then  
15 email, face-to-face.

16 Q. Okay. At any point in time, did the  
17 university direct you to preserve your documents,  
18 emails, communications, other notes?

19 A. Much later in 2006, but I don't remember  
20 when exactly.

21 Q. Okay. When you say "much later," was  
22 the -- then 2006, could that be more than a year?

23 A. I would -- yeah, I think so.

24 Q. Is that right? Okay. And let me clarify  
25 what we're talking about this. Are you represented

1 by anyone in this matter?

2 A. No.

3 Q. Is Mr. Ellis your lawyer?

4 A. No.

5 Q. Okay.

6 A. Well, I'm not sure what my status is as a  
7 university employee.

8 Q. Have you hired Mr. Ellis?

9 A. I have not.

10 Q. Okay. Me, either, but you never know.  
11 Just wanted to make that clear.

12 So -- all right. So sometime -- a good  
13 bit after you were -- you were asked to start  
14 preserving your information. Okay. And did you do  
15 that? Were you --

16 A. To the extent I had any. I mean, I  
17 stopped writing things down fairly early.

18 Q. Okay. And when you say "fairly early,"  
19 you stopped writing things down, you're referring to  
20 fairly early after the allegations were made public?

21 A. Right.

22 Q. And things started to go --

23 MR. ELLIS: Objection. All right.

24 BY MR. EKSTRAND:

25 Q. Are you aware of any efforts that were

1 undertaken without your involvement to preserve your  
2 emails and communications?

3 A. No, I -- at some point, they took my  
4 computer and imaged my hard drive.

5 Q. So do you know when that was?

6 A. When Danowski was here, so it was  
7 probably -- I would guess it was 2007 sometime.

8 Q. Anything else that you recall in that  
9 regard?

10 A. (No response.)

11 Q. All right. Let's move on. Let's talk  
12 about the allegations that gave rise to the criminal  
13 case and this one, ultimately. When I -- and to  
14 shorthand it, when I refer to allegations or the  
15 allegations, I'm referring to the allegations that  
16 the police have -- had said that Mangum made.

17 A. Okay.

18 Q. Crystal Mangum made. I'm not aware of any  
19 direct evidence that she unequivocally made them, so  
20 we'll just call them allegations. Okay? Are you  
21 familiar with what I'm talking about?

22 A. Uh-huh.

23 MR. ELLIS: Objection.

24 BY MR. EKSTRAND:

25 Q. Okay. When did you first learn of the

1 allegations?

2 A. I don't know the exact day. I think -- I  
3 think it was Tuesday, the 14th.

4 Q. And what -- how was it that you were  
5 informed?

6 A. I got a phone call from Sue Wasiolek.

7 Q. Who is Sue Wasiolek?

8 A. Sue Wasiolek is assistant Dean of  
9 Students, I think her title is.

10 Q. And she called you?

11 A. Uh-huh.

12 Q. And what did she say?

13 A. She said that -- I don't remember exactly,  
14 but something to the effect that there had been a --  
15 that there had been a party hosted by the lacrosse  
16 captains, that a woman had alleged that she was raped  
17 and that the allegations were not credible, and the  
18 police thought they were going to go away.

19 Q. Did she tell you that it was alleged to  
20 have occurred in a house rented by --

21 A. I don't remember.

22 Q. Okay. Did you understand that the  
23 allegations were connected in any way to the lacrosse  
24 team?

25 A. Yes.



1 Q. Okay. And now she said to you that  
2 they -- the allegations had been made and that they  
3 were not credible; is that right?

4 A. Uh-huh.

5 Q. Okay. How certain was she in her tone and  
6 in how she said that to you that they were not  
7 credible?

8 MR. ELLIS: Objection.

9 BY MR. EKSTRAND:

10 Q. You can answer.

11 A. Okay. I know that I -- I know that after  
12 talking to her, I wasn't concerned at all, if that  
13 tells you -- I mean, that I believed that she  
14 believed what she said.

15 Q. Would you say that she was unequivocal in  
16 her communication that the charges were not credible?

17 MR. ELLIS: Objection.

18 THE WITNESS: Again, I can just say that I  
19 was -- wasn't the least bit concerned after talking  
20 to her about the allegations.

21 BY MR. EKSTRAND:

22 Q. Now, that's not because you don't think  
23 that's a serious accusation?

24 A. No.

25 Q. Do you think that's a serious accusation?

1 A. Yes.

2 Q. Allegations of the most serious kind?

3 A. Uh-huh.

4 Q. Okay. Now, did she give you any details  
5 about why it was that she had concluded that?

6 A. No, no.

7 Q. Do you know who she was getting her  
8 information from?

9 A. I do not.

10 Q. And did she ask you to do anything or not  
11 do anything?

12 A. No, she was just calling to inform me.

13 Q. Do you know why she was calling you in  
14 particular?

15 A. I think she called Joe Alleva and me  
16 because we were the two top people in the department.

17 Q. Okay. Now, did she indicate to you that  
18 he was going to be handling it or who was going to  
19 have responsibility for what would happen next, if  
20 anything?

21 A. All --

22 MR. ELLIS: Objection.

23 THE WITNESS: All she did was tell me that  
24 these allegations had been made and they weren't  
25 credible.

1 BY MR. EKSTRAND:

2 Q. Do you know where she was when she called  
3 you?

4 A. No.

5 Q. If I could, let me go ahead and ask you,  
6 I'm going to hand this to the court reporter and mark  
7 this as Kennedy 1. Share this.

8 (Kennedy 1 was marked for identification.)

9 BY MR. EKSTRAND:

10 Q. Now, I've handed you a document, we've  
11 marked it here as Kennedy 1, and it's Plaintiff's  
12 8180 through 87.

13 All right. Take your time. I'd like you  
14 to just sort of take -- you can read it. You can  
15 peruse it, however you would like to review it. I've  
16 just got a couple questions about these exchanges,  
17 And tell me when you're ready.

18 MR. ELLIS: Objection.

19 BY MR. EKSTRAND:

20 Q. All right. And thank you for reading that  
21 carefully. Before I ask you a question, I do want  
22 the -- to ask you, unlike we normally do in normal  
23 conversation, try to answer yes or no with yeses or  
24 nos as opposed to nods and --

25 A. Okay. Yes.

1 Q. And I'm terrible about that, and I'll try  
2 to remind myself. But the court reporter finds that  
3 easier to translate.

4 So now, this is -- this document we've  
5 marked Kennedy Number 1 is an email series, the first  
6 or the top of which is an email from Sue Wasiolek  
7 dated March 31st, 2006 at 5:09 p.m., and the subject  
8 of the email is "pac2 Rape Investigation in Trinity  
9 Park, 610 North Buchanan."

10 Okay. Now, do you recall receiving this  
11 email or any of these emails?

12 A. I don't.

13 Q. Okay. Do you see your name as a -- a  
14 recipient on the --

15 A. Yes.

16 Q. -- email from Dean Sue? Okay. So at some  
17 point, do you think you got it?

18 A. Yes.

19 Q. All right. Now, there's a lot of people  
20 in this header with, you know, who are recipients of  
21 these emails. Are you familiar with these people,  
22 John Burness, Larry Moneta, David Jarmul, Paul  
23 Grantham, Keith Lawrence, Robert Dean, Larry Moneta,  
24 Kelly Gilmer?

25 A. I don't know who that is.

1 Q. Okay. Aaron Graves, Joe Alleva, you,  
2 Tallman Trask, John Jackson, Scott Selig?

3 A. I don't know who Eric Van Danen is or  
4 Leanora Minai.

5 Q. Okay.

6 A. All the others I know.

7 Q. Okay. And did you say you did not know  
8 who Kelly Gilmer was?

9 A. Correct.

10 Q. All right. So, generally speaking, a lot  
11 of these names are what? Who are these people?

12 A. Administrators. Larry Moneta is student  
13 affairs. Burness was the -- a PR guy, for lack of a  
14 better term, along with Keith Lawrence. Aaron Graves  
15 and Robert Dean were the police. Joe Alleva. Trask  
16 we've talked about. John Jackson is our sports  
17 information director. Scott Selig, I think has  
18 something to do with university real estate.

19 Q. David Jarmul and Paul Grantham, do you  
20 remember who they are?

21 A. Oh, yeah, David Jarmul also works --  
22 worked with Moneta and now works with Sean Feld, and  
23 Grantham has something to do with FMD.

24 Q. What is that?

25 A. Excuse me. Facilities management

1 department.

2 Q. Okay. So this is an email from Dean Sue.  
3 And it sort of summarizes what -- what she  
4 understands to be the scenario of events. She says  
5 that Durham police are, in fact, investigating an  
6 alleged rape, kidnapping at 610 North Buchanan on  
7 March 13th. Two strippers were hired to perform at  
8 610 North Buchanan. About 30 men were in attendance,  
9 all members of the Duke lacrosse team. One of the  
10 strippers appeared to be on drugs.

11 The men decided to pay the women early and  
12 then asked them to leave. The women refused and the  
13 men paid them more. The one stripper ended up  
14 passing out either on a porch or deck in the back of  
15 the house. The men carried her to the other woman's  
16 car. At some point later, the passed-out woman  
17 interacted with the Durham police at Kroger and made  
18 the allegations. I believe she was seen at the Duke  
19 ED. All right.

20 Now, is this -- had you heard anything  
21 else about this incident -- this is March 31st -- I'm  
22 sorry. That's March 17th. This was printed on  
23 March 31st. This email is March 17th, 2006 at  
24 11:00 o'clock. Had you heard anything since Dean Sue  
25 had called you about this?



1           A.    Actually, the next I heard of it was that  
2    day, March 17th, yes.

3           Q.    Okay.  What did you -- what did you hear  
4    that day?

5           A.    Coach Pressler brought the four captains  
6    to my office --

7           Q.    Okay.

8           A.    -- subsequent to the search to fill me in  
9    on what had happened.

10          Q.    Okay.  So did you -- were you aware that  
11   there was a search taking place when it occurred?

12          A.    No.

13          Q.    Okay.  So the next thing you heard about  
14   this was -- was Coach Pressler taking the captains to  
15   you?

16          A.    Uh-huh.  Yes.

17          Q.    And did you ask them to come or did he  
18   bring them to you?

19          A.    He brought them to me.

20          Q.    Okay.  So they came to you and what did  
21   they -- what did you discuss?

22          A.    Pressler wanted to give me their account  
23   of what had happened the night of the party and also  
24   a little bit about the search.

25          Q.    All right.  And they conveyed that to you?

1           A.    Yes.

2           Q.    All right.  In terms of the conversation  
3   that you had, did you -- did you -- did they talk to  
4   you about what they did during the investigation or  
5   during the search in terms of an interrogation or  
6   submitting to any testing?

7           A.    Yes.  They told me broadly what had  
8   happened, that the police had come, they had searched  
9   the house.  They had helped the police search the  
10  house.  That they had gone downtown.  I don't know  
11  what station they went to.  And that they had given  
12  statements.  They had given DNA samples and that they  
13  had offered to take a lie detector.

14          Q.    Okay.  So they told you they had offered  
15  to take a lie detector.  Did they tell you whether or  
16  not the police department administered one?

17          A.    They told me they did not, and I forget --  
18  I forget why they told them they didn't want them to  
19  take it.

20          Q.    Okay.  So the boys offered to take a  
21  polygraph and the police declined the offer?

22          A.    Correct.

23          Q.    But they did tell you that they submitted  
24  samples, specimens, for DNA testing?

25          A.    Correct.

1 Q. They did tell you that they submitted to  
2 interrogations, questions?

3 A. Correct.

4 Q. And they did tell you that they made  
5 written statements?

6 A. Yes.

7 Q. And did they tell you whether or not they  
8 cooperated with the police in obtaining the materials  
9 identified in the search warrant?

10 A. They told me that they helped them find  
11 things in the house that they were looking for, yes.

12 Q. Okay. Now, just to be clear, who was --  
13 who were the captains that were in front of you at  
14 that time?

15 A. Matt Zash, Dan Flannery, Bret Thompson and  
16 David Evans.

17 Q. And just to be clear, Bret Thompson did  
18 not live there?

19 A. That's correct.

20 Q. But the other three did?

21 A. Yes.

22 Q. And by "there," I mean 610 North Buchanan.

23 A. Yes.

24 Q. Okay. All right. What else did you  
25 discuss -- I'm sorry. What else did you discuss at

1 this meeting with the captains?

2 A. Based on their account of the way the  
3 search ended, that is that they had been reassured by  
4 the police that this was -- that nothing was going to  
5 come of this, I still wasn't concerned going forward,  
6 but I was surprised to discover that they hadn't told  
7 their parents and they hadn't consulted an attorney.

8 Q. You were surprised by that?

9 A. Yes.

10 Q. Tell me why.

11 A. Regardless of how inconsequential you  
12 think something is going to turn out, when a search  
13 warrant has been executed on your house, I would  
14 think that you would want, as a 21-year-old college  
15 student, that you'd want to consult somebody else for  
16 advice about that.

17 Q. Did they indicate to you why they had not  
18 sought counsel?

19 A. I don't think I let them indicate.

20 Q. What did you tell them?

21 A. I told them, go call your parents. Well,  
22 I had asked -- I had asked Dean Sue, when I found out  
23 that this house had been searched, right before  
24 Pressler brought them over, for advice about a  
25 lawyer, a local lawyer in case their parents wanted

1 to hire a local lawyer rather than somebody from  
2 their homes. And she had recommended Wes Covington,  
3 whom I didn't know.

4 But -- so I told them that they needed to  
5 call their parents right then on the spot and that  
6 they would need representation, and they needed to  
7 consult with their parents about that, but that Dean  
8 Sue had recommended this local guy.

9 Q. Okay. Anything else about that  
10 conversation that you thought memorable or later  
11 became important?

12 A. I don't know if it was important to the  
13 investigation. I mean, I was, I don't want to say  
14 enraged. I was really angry at them, and I wanted  
15 them to -- as I said, I didn't think it was anything  
16 serious was going to come of it at this point, and so  
17 I got up on my high horse, and I started to say that  
18 what needed to come out of this was that the younger  
19 guys had to get the message that something like this  
20 could never happen again. And that they were  
21 supposed to be leaders and that this was a real  
22 failure of leadership on their part, Evans and  
23 Flannery for planning the thing, and Zash, who didn't  
24 want to participate for just saying I don't want to  
25 have anything to do with it but not doing anything

1 about it. I wanted them to learn something from it.  
2 If I had foreseen what was coming, I would never have  
3 gotten up on the horse.

4 Q. Right, right. Okay. How did they take  
5 that message?

6 A. They understood.

7 Q. All right. Now, and so -- well, after  
8 that meeting, what was the next thing that happened  
9 in your recollection of events?

10 A. They -- they called their parents because  
11 I watched them do it.

12 Q. Okay.

13 A. Then they made contact with Covington, and  
14 I know that because later in the day, I went to  
15 practice, and Flannery told me they had a meeting  
16 with him the next morning. And then I saw Flannery  
17 after the -- they played a game that day, that  
18 Saturday. I saw Flannery after the game, said, "How  
19 did the meeting go?"

20 And he said, "Great," the meeting with  
21 Covington.

22 Q. All right. And is there anything further  
23 about that that you discussed?

24 A. No, I just saw him as he was going off the  
25 field, so we didn't...



1 Q. All right. So you just -- you just were  
2 checking to make sure that he had followed through  
3 with that, too?

4 A. Correct.

5 Q. All right. Now, back to Exhibit Kennedy  
6 Number 1. I wonder if you could flip to the second  
7 page. It's Bates marked 81 or 8181. Dean Sue goes  
8 on, and this is reporting very much what you've just  
9 described, "This last night the house was searched.  
10 The men volunteered to engage in DNA testing and to  
11 take a lie detector test. I believe that the DNA  
12 testing was done, that Mike Pressler and Chris  
13 Kennedy are well aware of this situation. The men  
14 have denied all allegations except hiring the  
15 strippers. I can be reached at" and her number,  
16 "Sue."

17 So this email is coming on the heels of  
18 what you've just described, that search and how the  
19 boys responded to it, right?

20 A. Yes.

21 Q. And that's dated March 17th, 2006, at  
22 1:50?

23 MR. ELLIS: Excuse me just a minute.  
24 What's on the picture?

25 MR. EKSTRAND: What picture?



1           MR. ELLIS: What's the range? In other  
2 words, am I on the picture?

3           MS. SPARKS: It's not even on right now,  
4 but I had moved it.

5           MR. ELLIS: I just saw her do something.  
6 I don't know if she turned it off or on.

7           MS. SPARKS: I was trying to turn it on  
8 without falling over anything. That was it.

9           MR. ELLIS: Okay. I'm sorry for the  
10 interruption.

11 BY MR. EKSTRAND:

12           Q. Okay. So not only did you know from this  
13 report that Pressler and the captains gave you that  
14 they had submitted voluntarily to all these police  
15 investigative procedures, but all 17 people on this  
16 email also knew shortly after you did, right?

17           A. If they received their email and if they  
18 read it, yes.

19           Q. Any chance folks would have blown this one  
20 off?

21           A. I would find it unlikely.

22           Q. The subject is "Rape investigation in  
23 Trinity Park." And that's John Burness, Larry Moneta  
24 and others.

25           Okay. Now, if you keep going down here,

1 this is what I wanted to -- on page 8181, this is an  
2 email, and as emails go, it's going backwards in time  
3 at 11:18 in the morning of Friday, March 17th, 2006.  
4 Robert Dean. And who is that?

5 A. I believe it was the chief of Duke police  
6 at the time.

7 Q. Okay. Is writing an email to what appears  
8 to be most of the people on that original email, the  
9 press and administrative people at Duke. And is  
10 responding to an earlier questions.

11 But he says, "Yes, Duke students" -- well,  
12 grammatically, it's not correct, I'll just read it as  
13 it is. "Yes, Duke students who resides in the house  
14 are suspects. As far as whether charges will be  
15 filed is unknown at this time. Durham police  
16 continues to investigate. Bob. Robert H. Dean."

17 Okay. Duke students who reside in the  
18 house were suspect. How does that hit you?

19 MR. ELLIS: Object.

20 BY MR. EKSTRAND:

21 Q. How do you respond to that at this time,  
22 given what you understand the nature of the  
23 allegations and the assessment of the allegations?

24 MR. ELLIS: Object.

25

1 BY MR. EKSTRAND:

2 Q. As Dean Sue reported them to you, is this  
3 consistent with that?

4 MR. ELLIS: Object.

5 THE WITNESS: Well, I still wasn't  
6 concerned that it would amount to anything. I had to  
7 think that they searched the house for a reason and  
8 that the -- the residents of the house, if they're  
9 going to conduct an investigation, would be the  
10 logical suspects, yeah.

11 BY MR. EKSTRAND:

12 Q. Okay. And it was Keith Lawrence who asked  
13 the question that prompted that response, and he  
14 asked, "Have anyone touched base with Durham PD about  
15 whether the Duke students are suspects in this, what  
16 are the likely charges?" Who is Keith Lawrence?

17 A. Keith Lawrence is one of the people that  
18 worked in John Burness' office. I don't know what  
19 his exact title was.

20 Q. He was a press guy, right?

21 A. Yes, correct.

22 Q. A lot of these people are press people,  
23 right?

24 A. Yes, correct.

25 Q. Any idea why Duke's press people are

1 interested in this or asking questions and having  
2 them answered like this?

3 MR. ELLIS: Object.

4 THE WITNESS: I can only suspect what  
5 their motives were.

6 BY MR. EKSTRAND:

7 Q. All right. What do you guess?

8 A. My speculation would be that the word  
9 "rape" and the word "Duke" together are not good for  
10 public relations, that they wanted to get ahead of  
11 that.

12 Q. Okay. Right. You think that this  
13 indicates a perception of a potential PR problem for  
14 Duke?

15 A. Yes.

16 Q. Now, did you ask the captains directly  
17 whether or not this happened?

18 A. I asked them to give me their account of  
19 the evening.

20 Q. Okay.

21 A. And at the end of that, I was confident  
22 that the allegations were, in fact, baseless.

23 Q. Okay. So did you believe them?

24 A. Yes.

25 Q. All right. And when they gave you the

1 account of the evening, it did not include anybody  
2 engaging in any assault of any kind, correct?

3 A. That's correct.

4 Q. How well did you know them?

5 A. Very well.

6 Q. How long had you known them?

7 A. I helped recruit some of them.

8 Q. Is that right? So over four years?

9 A. Correct.

10 Q. You knew their families?

11 A. Yes. Although there was a -- I tried not  
12 to get too close to the families because I was  
13 Pressler's boss. And also, I was a lacrosse parent  
14 up until the year before, and that put me in sort of  
15 an odd situation in the middle of things. So I  
16 didn't sit with the families, I didn't socialize with  
17 the families, I didn't tailgate with the families.

18 Q. You were referring to Joe, your son?

19 A. Yes, my son, Joe.

20 Q. He was a member of the lacrosse team for  
21 the four years prior?

22 A. Until 2005.

23 Q. Okay. So he had just graduated the year  
24 before?

25 A. Correct.

1 Q. All right. Now, did anybody ask you,  
2 given your position and your knowledge of these boys,  
3 did anybody ask you whether this could have happened?

4 A. I don't remember that question being  
5 explicitly asked. Well, sort of indirectly asked a  
6 week later when they met with Alleva, Pressler, Trask  
7 and me. And they gave virtually the same account and  
8 then went out, left the room to go out to practice.  
9 And Pressler asked people what they thought of their  
10 account.

11 Q. Okay. And what was said?

12 A. I said that I had always believed them. I  
13 don't remember what Alleva said. Trask said  
14 something to the effect that he would be amazed if  
15 there were -- was anything to the allegations or  
16 something like that.

17 Q. Okay. When did that meeting occur that  
18 you've just described? This was a week later, you  
19 say?

20 A. A week later, which would have been the  
21 24th.

22 Q. Okay. Of March?

23 A. Correct.

24 Q. All right.

25 A. No, the 23rd.

1 Q. Was it a Friday or a Saturday?

2 A. It was a Friday.

3 Q. And there was a game on Saturday, right,  
4 or the next day?

5 A. Was it Saturday or Sunday?

6 Q. The weekend?

7 A. Yeah, it was that weekend. I think -- I  
8 guess it was Saturday, yes.

9 Q. All right. Just -- and so to put that in  
10 context, this meeting is occurring before this  
11 weekend game?

12 A. Correct.

13 Q. And who -- who called the meeting that  
14 you've just described, and we're saying it's the  
15 23rd, right?

16 A. I don't know for sure.

17 Q. 4th.

18 A. I believe that there had been a -- the  
19 nontestimonial order had been served the day before,  
20 Thursday. So there had been an article in the paper  
21 that morning about the lacrosse team showing up with  
22 their coats over their heads. And I believed that  
23 Trask asked to meet with them and had been sent down  
24 by the administration to investigate further.

25 I had called him actually as soon as I



1 found out about the NTO the day before to tell him  
2 that this is going to happen, and this is going to  
3 get in the papers because we had been concerned with  
4 the boys -- the boys had been very concerned about it  
5 being in the newspapers before that.

6 Q. Right. So who is in attendance? So Trask  
7 is coming to ask for this meeting.

8 A. It's my -- that's my assumption. I don't  
9 know that.

10 Q. Who else is in this meeting? It's you,  
11 Pressler, Trask?

12 A. And Alleva.

13 Q. And Alleva. And that's it?

14 A. Uh-huh.

15 Q. And then the four captains?

16 A. Correct.

17 Q. Okay. Did their -- did their account vary  
18 in any meaningful way?

19 A. No.

20 Q. Between the one they gave you and this  
21 one?

22 A. No.

23 Q. You told everybody present after the boys  
24 left that you believed them?

25 A. Yes.

1 Q. Did you tell them that their story was  
2 consistent with what they had told you the week  
3 before or --

4 A. I don't recall saying that. I think  
5 Pressler might have said that.

6 Q. Now, this is coming on the heels of the  
7 nontestimonial identification order that had a rather  
8 sensational affidavit attached to it. Do you  
9 remember that?

10 A. I don't remember the whole thing. I do  
11 remember the phrase, something to the effect that  
12 we'll definitively rule out the innocent and identify  
13 the guilty or something like that.

14 Q. Okay. So just to be clear, before we --  
15 and I want to talk to you about the affidavit in a  
16 second, but at this meeting after the affidavit had  
17 been made a part of the NTO and distributed and the  
18 boys complied with it, after that happened, this  
19 meeting occurred. Did anybody in that meeting  
20 express doubt about your believing -- your basis for  
21 believing them?

22 A. No.

23 Q. Did anybody say, Lord, Chris, do you  
24 really believe what they're saying?

25 A. No.

1 Q. Did you think that -- did anybody express  
2 their belief in what the boys were saying?

3 A. Well, you know, Trask, I forget exactly  
4 what he said, but his -- I would be amazed if there  
5 were anything to it or something like that would be  
6 sort of an indirect expression that he believed them.

7 Q. All right. I'm going to hand you a  
8 document, and for the record, it's Bates marked  
9 Plaintiff's 22368 through -- that's an individual  
10 document, and then 8,361 through 8,370.

11 MR. THOMPSON: She'll be handing you what  
12 is Kennedy 2.

13 (Kennedy 2 was marked for identification.)

14 MR. EKSTRAND: Now, the first page is a  
15 fax cover sheet.

16 (Off-the-record discussion.)

17 BY MR. EKSTRAND:

18 Q. So first page is a fax cover sheet from  
19 Wes Covington's law firm to Mike Pressler, dated  
20 March 23rd, 2006. And then the rest of it is the  
21 nontestimonial identification order and the  
22 application for that order identifying every member  
23 of -- every white member of the men's lacrosse team.  
24 And then beginning on page 8369, the quote/unquote  
25 fax that established probable cause.

1           Okay. What -- do you recognize the fax  
2 number on this page from -- fax cover sheet from Wes  
3 Covington's firm, 919-688 -- sorry. 919-681-2378?

4           A. I don't.

5           MR. ELLIS: What are you looking at?

6           MR. EKSTRAND: Fax number.

7           MR. ELLIS: All right.

8 BY MR. EKSTRAND:

9           Q. That's directed to Mike Pressler?

10          A. Yeah, I would assume it's a fax over at  
11 the Murray Building.

12          Q. Now, were you -- where were you when this  
13 nontestimonial order was delivered to the Murray  
14 Building?

15          A. When it was delivered, I was there.

16          Q. Okay. So who else was there?

17          A. The -- I think the whole team, though, I  
18 wouldn't swear to that because there were 46 of them,  
19 I believe. You were there. Wes Covington, Pressler.  
20 And -- I don't remember if any of the assistant  
21 coaches were there.

22          Q. And why were you there?

23          A. I was there because I got a phone call  
24 from somebody informing me that this was happening.  
25 It might have been Kyle Dowd, who was one of the

1 players at the time. And he said something to the  
2 effect that the coaches are telling them that they  
3 have to go downtown to give their DNA and have their  
4 photographs taken, something like that. So I hurried  
5 over there to see what was going on.

6 Q. Okay. And were you there when the NTO  
7 was, in fact, delivered?

8 A. Yes.

9 Q. And is the document in front of you, the  
10 document that was delivered, as best as you can  
11 recall?

12 A. I don't -- I didn't look at it at the  
13 time.

14 Q. Okay. Did you have a copy of it --

15 A. No.

16 Q. -- at any point? Okay. Did you have an  
17 opportunity to read any of it at the time?

18 A. Just the -- just the parts of it that were  
19 reported elsewhere.

20 Q. All right. Now, you mentioned in this  
21 whole litany of narrative that there was a statement  
22 that caught your eye, or at least kept your  
23 attention, about the effectiveness of the DNA tested  
24 in this case?

25 MR. ELLIS: Objection.

1 BY MR. EKSTRAND:

2 Q. Can you find that?

3 MR. ELLIS: Objection.

4 BY MR. EKSTRAND:

5 Q. Actually, you know what, Dr. Kennedy, I  
6 think you should -- why don't you read through this  
7 document? I've got a few questions to ask, and I  
8 think it would probably be better to give you time to  
9 read it. It's an important document, obviously.

10 MR. ELLIS: May we have standing  
11 objections to questions that go outside the bounds of  
12 the -- of discovery regulation in this case, similar  
13 to the objections that we had?

14 MR. EKSTRAND: You may have a standing  
15 objection. And this is the relevance objection to  
16 scope?

17 MR. ELLIS: It's -- you know our position.  
18 We don't think discovery should extend beyond what  
19 the Court has said discovery should be limited to.  
20 And what I want is a standing objection to anything  
21 that goes beyond the scope.

22 MR. EKSTRAND: Okay. And our position,  
23 just for the record, is, of course, that we're not  
24 asking for anything that we think approach the bounds  
25 of the authorized discovery under the Court's order



1 and the discovery order. And I'll just -- I think  
2 I'm going to put into the record now your  
3 interrogatories and requests for documents, which ask  
4 us to produce, and we have produced, all documents  
5 concerning Ms. Mangum's allegations, among other  
6 things.

7 So we're staying within certainly that  
8 line and also the other request you made to produce  
9 all videotapes or photographs concerning this subject  
10 matter of this litigation. This is a document  
11 request. So for the record, that's just -- that's  
12 just what we see.

13 MR. ELLIS: It's not my purpose to argue  
14 with you about any of this, just to know whether I  
15 have a standing objection.

16 MR. EKSTRAND: You don't have to respond.  
17 I'm just making the objection.

18 MR. THOMPSON: Mr. Ellis, you may have the  
19 standing objection during my three and a half hours.

20 MR. ELLIS: Are you going to take yours  
21 today?

22 MR. THOMPSON: I'm not, but I'll give it  
23 to you now.

24 MR. ELLIS: You're a good man. Thank you  
25 very much.



1 MR. EKSTRAND: Make that Plaintiff's 3.  
2 Can I suggest that we take a five-minute break and  
3 give Dr. Kennedy a chance to finish? Does that make  
4 sense?

5 (Kennedy 3 was marked for identification.)

6 (A recess transpired from 2:00 p.m. until  
7 2:07 p.m.)

8 BY MR. EKSTRAND:

9 Q. All right. You've had a chance to read  
10 this --

11 A. Yes.

12 Q. -- this document?

13 A. Yes.

14 Q. Is it familiar to you?

15 A. I had not seen this document itself  
16 before.

17 Q. Okay. So this was -- this was a document  
18 that accompanied -- this was a document that  
19 comprised the nontestimonial identification order,  
20 and it contains facts that establish probable cause.  
21 And in there, it also explains why the testing would  
22 be material to the investigation.

23 Now, you had told me something in an  
24 answer earlier that there was a suggestion in this  
25 document that any DNA testing would be important in

1 this case?

2 MR. ELLIS: Objection --

3 THE WITNESS: Correct.

4 MR. ELLIS: -- to that and to the preamble  
5 to the question.

6 BY MR. EKSTRAND:

7 Q. The answer?

8 A. Correct.

9 Q. Okay. Well, did you see it here?

10 A. Yes, I did.

11 Q. And could you read into the record what  
12 you were referring to?

13 A. "The DNA evidence requested will  
14 immediately rule out any innocent persons and show  
15 conclusive evidence as to who the suspects are in the  
16 alleged violent attack upon this victim."

17 Q. That's it?

18 A. Yes.

19 Q. You were in the Murray Building when this  
20 was delivered to the team?

21 A. Yes.

22 Q. And the team was collected in a conference  
23 area or sort of a classroom-type room?

24 A. A meeting room, yes.

25 Q. All right. And the team was told where to

1 go to submit to this order?

2 A. Yes.

3 Q. Okay. And that it was somewhere downtown?

4 A. Yes, I don't remember the details.

5 Q. Yeah. And now, this document says that  
6 the DNA test that would be conducted on the materials  
7 submitted by the players would establish who was  
8 responsible or who was the suspect and who was not?

9 A. Correct.

10 Q. That's pretty clear. And did you have an  
11 opportunity to see, observe the members of the team  
12 react or respond to the information about where to go  
13 if they wanted to comply with this order?

14 A. Yes, I was standing at the front of the  
15 room.

16 Q. Okay. And what did you observe?

17 A. Nothing -- well, in a sort of a remarkable  
18 circumstance, nothing remarkable. They were  
19 confused. They were concerned. They weren't -- just  
20 sort of dropped out of the sky on them. But I didn't  
21 see any evidence of anybody being worried about the  
22 DNA testing itself.

23 The only concern they expressed was would  
24 the -- when they photographed them looking for  
25 injuries, would they be able to determine injuries

1 that had been caused by playing lacrosse? Because  
2 your arms, all through the whole season, your arms  
3 are covered with little marks and welts and bruises.

4 Q. You know that from personal experience?

5 A. I do.

6 Q. And they were concerned about the police?

7 A. Misinterpreting those --

8 Q. Right.

9 A. -- injuries.

10 Q. And nevertheless, did you see anybody hang  
11 back or stop in the progress towards the door?

12 A. No.

13 Q. They all left?

14 A. They all left, yeah.

15 Q. Okay. Now, as you understand these  
16 allegations, and with what you know about DNA  
17 testing --

18 A. Which is very little.

19 Q. Right. In light of the nature of this  
20 attack, what is -- the victim's, my God, there's  
21 fingernails flying off of her hands, three men in the  
22 bathroom, 30 minutes, and sexual violence of every  
23 kind, right?

24 A. Correct.

25 MR. ELLIS: Objection.

1 BY MR. EKSTRAND:

2 Q. As a layman, what's your -- what do you  
3 think the likelihood that somebody guilty of this  
4 conduct is going to clear a DNA test?

5 MR. ELLIS: Objection.

6 THE WITNESS: According to my  
7 nonprofessional, amateur understanding of these  
8 things, zero.

9 BY MR. EKSTRAND:

10 Q. Right. So anybody who did this and went  
11 to that identification center was really just walking  
12 themselves into jail, wasn't he?

13 MR. ELLIS: Objection.

14 THE WITNESS: I would think they would  
15 have to be very concerned about the results of the  
16 test, yes.

17 BY MR. EKSTRAND:

18 Q. Yeah. Right. Now, let me ask you: Do  
19 you -- do you know about the house, the 610 North  
20 Buchanan, the physical structure of the house?

21 A. I do not.

22 Q. Had you ever been in it?

23 A. Never.

24 Q. Okay.

25 A. The only thing I know about it is what I

Durham, NC

1 saw when I went over to the special prosecutor's  
2 office the following year.

3 Q. Tell us about that. Why were you there?

4 A. I was there because Devon Sherwood, who  
5 was the black member of the team and who had not been  
6 ever listed as a suspect, was asked to go over and  
7 meet with -- testify before the special prosecutors.  
8 He had never retained a lawyer because he was -- had  
9 been excluded. And his parents called me to ask if I  
10 would go over there with him because they didn't want  
11 to pay you \$750 an hour to accompany him. So I went  
12 with him over to meet with Jim Coman and Mary  
13 Winstead and some SBI agents.

14 Q. What did you learn about the house in your  
15 meeting with the special prosecutors and Devon  
16 Sherwood?

17 A. I learned from the -- the big billboard of  
18 the outline or the -- the house that they had up on  
19 the easel there, basically, what the general outline  
20 was. But I didn't actually pay that much attention  
21 to it except when they asked specific questions about  
22 who was here and who was here of Devon.

23 Q. Now, the allegation was that this -- this  
24 four-person assault that ultimately occurred in this  
25 bathroom, the one particular bathroom, were you aware

1 of that?

2 A. Yes.

3 Q. Okay. Do you have any -- did you -- do  
4 you have any knowledge about the size of that  
5 bathroom?

6 A. Not directly. I mean, from looking at the  
7 diagram, and I didn't look for an indication of  
8 scale, but it looked to be fairly small.

9 Q. Okay. And generally speaking, are  
10 lacrosse players small people?

11 A. Not -- not as a whole, no.

12 Q. Okay. Now, that bathroom, did you -- do  
13 you know -- well, we've got video of it. Did the  
14 prosecutors -- did any of the special prosecutors  
15 talk to you at all or Devon at all about the  
16 bathroom?

17 A. I don't recall.

18 Q. All right. Now, you had a meeting -- you  
19 had this meeting with the boys' captains and Trask,  
20 Pressler, you, the next day, the day after this NTO  
21 was executed?

22 A. Correct.

23 Q. So in the face of these allegations, Trask  
24 concludes, or in the face of these allegations in the  
25 NTO and the exchange you had with the captains, what



1 did Trask say again?

2 A. Something to the effect of he would be  
3 amazed or astounded or -- if there was anything to  
4 the allegations.

5 Q. Okay.

6 A. And then he said -- he also said that they  
7 would make the lacrosse team clean up the property,  
8 the Duke properties in Trinity Park as a punishment.

9 Q. Okay. So that was his assessment at that  
10 point?

11 A. Yes.

12 Q. Okay. Now, Trask is an executive vice  
13 president at the university, right?

14 A. That's correct.

15 Q. He has oversight over the police  
16 department of Duke University, right?

17 A. I don't know that for a fact.

18 Q. All right. Did he indicate that he had  
19 any information from the Duke police about this?

20 A. No.

21 Q. All right. Did you ever hear anything  
22 along the way about whether or not there was any  
23 right of access or any permission being given to  
24 anybody to enter 610 North Buchanan Boulevard during  
25 the criminal investigation or after? Did the

1 administration have a policy about it?

2 A. I never heard anything about that.

3 Q. All right. Now, so all -- this meeting  
4 happened on, well, before the Georgetown game, right?

5 A. Correct.

6 Q. And what happened at the Georgetown game?  
7 Did they play it?

8 A. They did not.

9 Q. Okay. What happened?

10 A. All I can tell you now is what I've been  
11 told because I was not involved in any administrative  
12 decisions after that Friday. And in fact, I found  
13 out that the game had been canceled from my son, who  
14 called me from down in Wilmington.

15 Q. Okay.

16 A. I was changing to come over to the game,  
17 as a matter of fact, at the time that he called.

18 Q. Is that right?

19 A. Yes.

20 Q. So this was right before the game that you  
21 found out?

22 A. Right.

23 Q. What -- what did you learn?

24 A. I learned that the game had been canceled,  
25 but --

1 Q. Go ahead.

2 A. Well, I was hearing it from my son, so he  
3 didn't have any particularly accurate or inside  
4 information.

5 Q. Did you have an opportunity to look into  
6 it, why it was canceled?

7 A. Well, shortly thereafter, I got a call  
8 from Joe Alleva saying that the parents wanted to  
9 meet with him and would I come over to join that  
10 meeting.

11 Q. The parents, being the parents of the  
12 team?

13 A. The parents of the lacrosse players.

14 Q. And did you agree to do that?

15 A. Yes.

16 Q. So what happened at the meeting?

17 A. The parents were upset and angry. The  
18 parents -- parents are -- well, I don't want to  
19 characterize all of the parents. There were among  
20 the parents fairly accomplished prominent lawyers and  
21 people with the means to get an understanding,  
22 information, so they knew quite a bit about Wes  
23 Covington.

24 They had, I guess, over the course of the  
25 last week or so, they had done some research on some

1 things. They were interested in knowing if every  
2 team that had a party would have their games  
3 canceled. It became clear to them fairly quickly  
4 that -- that Joe Alleva wasn't the only person they  
5 needed to talk to about this, and could he get  
6 Wasiolek and Trask and Moneta and Brodhead to come to  
7 the meeting.

8 Q. Okay.

9 A. And the first three agreed to come over.

10 Q. Okay. And so that's Wasiolek, Moneta and  
11 Trask?

12 A. Correct.

13 Q. And what about Brodhead?

14 A. Brodhead did not come.

15 Q. Where was he?

16 A. I don't know.

17 Q. Do you know why he didn't come?

18 A. I don't know.

19 Q. Was it ever expressed by anybody why he  
20 didn't come?

21 A. Not to me.

22 Q. Okay. You've been in that athletic  
23 department for a very long time at this point. Had  
24 any team ever been subject to the cancellation of  
25 games because of allegations of misconduct?

1 A. Not that I recall.

2 Q. Well, has any team ever been subject to  
3 the forfeit of a season because of allegations of  
4 misconduct on some of its members?

5 A. No.

6 Q. Do you know in NCAA's recent history  
7 whether any team has been subject to the cancellation  
8 of their games by their university for an entire  
9 season for misconduct of members?

10 A. You know, I don't remember.

11 MR. ELLIS: Objection.

12 THE WITNESS: I don't remember the  
13 details. I think something happened at the  
14 University of Vermont with their hockey team. I  
15 don't recall any others.

16 BY MR. EKSTRAND:

17 Q. Okay. And this was a team that, in terms  
18 of the lacrosse world, was it a prominent team?

19 A. Yes.

20 Q. Why was that?

21 A. Well, it's prominent -- Duke lacrosse is  
22 prominent, first of all, simply because it's in the  
23 Atlanta Coast Conference, which is the strongest  
24 lacrosse conference in the country. But this  
25 particular team had gone to the national championship

1 a year before, won 17 games, which at the time was an  
2 NC2A record and lost the national championship game  
3 by a goal and had virtually all of the significant  
4 players back. So they were -- they were preseason  
5 number 1 and favored to win the national  
6 championship, which is different from actually doing  
7 it.

8 Q. You bet. But it's not a bad spot to be?

9 A. Correct.

10 Q. And that makes you prominent as a team?

11 A. Yes.

12 Q. So your son told you the game was  
13 canceled?

14 A. Correct.

15 Q. And it was canceled by the administration  
16 of Duke University?

17 A. Yes.

18 Q. Did anybody consult with you?

19 A. No.

20 Q. As -- okay. To your knowledge, did  
21 anybody consult with Joe prior to canceling the game?

22 A. I believe there was a meeting at  
23 Brodhead's house that morning that included Trask and  
24 Moneta, and I believe Joe was included in that  
25 meeting.

1 Q. So Brodhead was on campus at least then?

2 A. That would be the inference.

3 Q. Okay. So do you know who made the  
4 decision to cancel the game?

5 A. No.

6 Q. Now, Dean Sue and Trask and Moneta, you  
7 said, came to this meeting with parents?

8 A. Yes..

9 Q. Do you remember the gist of what they were  
10 saying to the parents?

11 A. You know, I didn't stay for the whole --  
12 it went on for hours, and my role -- I had no role  
13 from the time they appeared, so I didn't stay for --  
14 and they didn't appear at the same time.

15 Dean Sue showed up first, and I was there  
16 when she spoke to the parents. And she was having  
17 the same difficulties sort of defending the  
18 consistency of that decision as compared to when  
19 other teams have had parties. And I, you know, I  
20 left as Moneta and Trask were arriving. So I didn't  
21 hear the exchange between them and the parents.

22 Q. Okay. Do you recall what the nature of  
23 the concerns that the parents were expressing was?

24 A. There were a number of concerns. I mean,  
25 one was the equity of it, but the other was that --



1 that by canceling the games, that they were sending  
2 the message that they believed in the guilt of the  
3 players.

4 Q. Did you agree with that sentiment?

5 A. I thought that somebody from the  
6 outside -- in light of the newspaper article that  
7 appeared that morning in the News and Observer,  
8 "Dancer gives Details of Ordeal," I thought that that  
9 would send the message that that was, in fact, an  
10 accurate account of what had happened.

11 Q. Now, do you know -- and the parents were  
12 making this, at least as far as you knew, they made  
13 that concern known to Dean Sue, at least?

14 A. Yes.

15 Q. And --

16 A. And to Joe.

17 Q. And to Joe. All right. You mentioned a  
18 moment ago that after that day, you did not have much  
19 in the way of information or communication about  
20 this. I'm not sure how you put it.

21 A. I would say I was not included in any of  
22 the administrative deliberations over what to do.

23 Q. Okay.

24 A. Until -- well, and this doesn't even  
25 count, really. Sometime later I got a phone call

1 from Bob Steel, who was the chair of the board of  
2 trustees at the time, whom I had never met, asking me  
3 to meet with him and the parents at some point. But  
4 that meeting never happened.

5 Q. Okay. Do you recall when that might have  
6 been?

7 A. It was probably -- I don't. Probably a  
8 month or six weeks later.

9 Q. Do you recall why he wanted to meet with  
10 the parents or suggested it?

11 A. I don't remember the conversation very  
12 well because it was sort of surprising to me. But  
13 he -- his -- he was saying something to the effect  
14 that the parents didn't view Alleva favorably and --  
15 or Brodhead, for that matter, and that he wanted to  
16 meet with them to talk about the situation and to  
17 have me come with them because the parents had some  
18 kind of faith in me.

19 Q. Okay. And you were willing to do that?

20 A. I was willing to think about it.

21 Q. Okay. But it never came to pass?

22 A. It did not.

23 Q. Let me hand you a document that we will  
24 mark as Kennedy Number 4. And go ahead and read  
25 this.

Durham, NC

1 MR. ELLIS: Did I miss 3?

2 MR. EKSTRAND: 3 is your discovery  
3 request. Sorry.

4 (Kennedy 4 was marked for identification.)

5 BY MR. EKSTRAND:

6 Q. Okay. This is a memorandum of some kind.  
7 It's entitled "Statement by President Richard H.  
8 Brodhead on Duke Men's Lacrosse Team" subtitled  
9 "Applauds decision by athletic director and urges  
10 cooperation with police investigation, while noting  
11 need to establish facts."

12 Okay. It's apparently dated March 25th,  
13 2006, and it begins, this statement by President  
14 Brodhead, "Physical coercion and sexual assault are  
15 unacceptable in any setting and have no place at  
16 Duke. The criminal allegations against three members  
17 of our men's lacrosse team, if verified, will warrant  
18 very serious penalties. The facts are not  
19 established, however, and there are very different  
20 versions of the central events. No charges have been  
21 filed, and in our system of law, people are presumed  
22 innocent until proven guilty. We also know that many  
23 members of the team, including some who were asked to  
24 provide DNA samples, did not attend the party."

25 It goes on to say, "I urge everyone to

1 cooperate to the fullest with police inquiry while we  
2 wait to learn the truth.

3 "Whatever that inquiry may show, it is  
4 already clear that many students acted in a manner  
5 inappropriate to a Duke team member in participating  
6 in the March 13 party. I applaud Athletics Director  
7 Joe Alleva for responding to the conduct that is not  
8 in question, even as we wait for the investigation to  
9 determine the truth about the disputed parts of the  
10 events." And the contact is John Burness for this.

11 Okay. You recall this statement?

12 A. Yes.

13 Q. Okay. And it's Saturday, March 25th,  
14 2006?

15 A. I don't remember when I saw it, but I  
16 recall the statement.

17 Q. Right. That -- it's dated March 25th,  
18 that Saturday?

19 A. Correct.

20 Q. That's the same day of the Georgetown game  
21 that was canceled?

22 A. Yes.

23 Q. So when it says -- when President Brodhead  
24 says, "I applaud Athletic Director Joe Alleva for  
25 responding to the conduct," that's not a question.

1 What is it referring to you in your understanding?

2 A. A party.

3 Q. And how was Joe responding? What did he  
4 do?

5 A. Well, the implication is that Joe was the  
6 one who canceled the game.

7 Q. Okay. So -- so the cancellation was in  
8 response to the conduct allegedly that wasn't in  
9 question, right?

10 MR. ELLIS: Objection.

11 THE WITNESS: Correct.

12 BY MR. EKSTRAND:

13 Q. Did Joe Alleva make that decision?

14 A. I don't know.

15 Q. Did he ever indicate to you that he did or  
16 didn't?

17 A. No.

18 Q. Now, this is Saturday, March 25th, the day  
19 the parents are talking to the administrators and  
20 asking to speak to Brodhead, correct?

21 A. Correct.

22 Q. And he doesn't attend?

23 A. Correct.

24 Q. Instead, he issues this statement?

25 A. He issued the statement, yes.

1 Q. Right. What do you think about this  
2 statement in terms of the context at that time?

3 MR. ELLIS: Objection.

4 THE WITNESS: I think that as a writing  
5 teacher, it's unfortunately constructed.

6 BY MR. EKSTRAND:

7 Q. How so?

8 A. In that it leads with the phrase, the  
9 words "physical coercion and sexual assault." And  
10 then the next sentence begins, "the criminal  
11 allegations against the three members of our team,"  
12 and so it gives the position of importance to the --  
13 the allegations and tends to leave the impression  
14 there's substance to them.

15 Q. Now, you're talking about the structure?

16 A. Yes.

17 Q. And by that, referring -- when he  
18 references the facts not being established, that's in  
19 the middle?

20 A. That's subordinated to "physical coercion  
21 and sexual assault."

22 Q. Okay. And President Brodhead is a  
23 linguist, right?

24 A. He's an American literature specialist,  
25 English.

1 Q. So he knows how to set up a paragraph for  
2 effect?

3 A. I don't know --

4 MR. ELLIS: Objection.

5 THE WITNESS: -- who wrote this.

6 BY MR. EKSTRAND:

7 Q. Okay. Good point. So do you recall this  
8 day, the press has just issued -- has just made its  
9 first story following the NTO process?

10 A. Well, the second -- the first story was  
11 the report of the NTO. So the second day was  
12 Saturday, that headline story in the News and  
13 Observer.

14 Q. Okay. Do you -- do you recall what's  
15 happening out around the team and around Duke at this  
16 point as this statement is made?

17 A. I didn't actually see anything. I came  
18 straight to the Murray Building after the game had  
19 been canceled. And the only thing that was going on  
20 there was that the players were -- that Pressler sent  
21 the players up to the weight room. And I came down  
22 to the squad room to meet with the parents.

23 Q. Okay. Now, I want to show you -- when I  
24 hand you a bunch, several documents, and we'll just  
25 go ahead and mark them as we go. Actually, Steve



1 will do it.

2 MR. EKSTRAND: This one will be Kennedy  
3 Number 5.

4 (Kennedy 5 was marked for identification.)

5 BY MR. EKSTRAND:

6 Q. Do you recognize that page?

7 A. Yes.

8 Q. What is that?

9 A. It's what was referred to, at least by the  
10 players, the wanted poster that appeared on campus.

11 Q. It says, "Please come forward. We're not  
12 saying that all 46 were involved. But we do know  
13 that some of the players inside that house on that  
14 evening knew what transpired and we need them to come  
15 forward." And there were pictures on this page. Who  
16 was -- who is -- who are these people?

17 A. Those are the members -- not all the  
18 members, but most of the members of the 2006 lacrosse  
19 team.

20 Q. Okay. Do you see the Plaintiffs in our  
21 case on this, Matt Wilson, Ryan McFadyen, Breck  
22 Archer?

23 A. Well, Breck is right at the top, and  
24 McFadyen, and, yes, there's Matt Wilson. Yes, I do.

25 Q. All right. Now, had you seen this

1 document before, this poster?

2 A. Before today?

3 Q. Uh-huh.

4 A. Yes.

5 Q. All right. Where did you see it?

6 A. Somebody brought me a copy of it at the  
7 time. I don't remember who.

8 Q. Okay. Did you see it on campus anywhere?

9 A. I never saw it on campus, no.

10 Q. Were you aware that it was posted on  
11 campus?

12 A. I was told that it was posted on campus,  
13 yes.

14 Q. Okay. If you want to -- I'm going to show  
15 you -- I think we're going to cue up a video just to  
16 maybe trigger some of your memories about this  
17 weekend. After the game, do you recall a candlelight  
18 vigil after the game was canceled of various  
19 activities?

20 A. I don't personally recall anything like  
21 that because I wasn't there.

22 Q. I think we have a clip from WRAL. We'll  
23 see if this goes, and we'll call this Kennedy 6 and  
24 get you a CD-ROM, if that's okay.

25 (Kennedy 6 to be marked for identification.)

1 MR. ELLIS: When you say "you," you're  
2 talking to me?

3 MR. EKSTRAND: Yeah, you've already got  
4 this.

5 MR. ELLIS: I still want one marked as an  
6 exhibit.

7 MR. EKSTRAND: That's what comes with the  
8 deposition, usually.

9 MR. ELLIS: You're going to see that there  
10 is a copy marked as an exhibit that I will get or  
11 that the reporter will get, I'll get a copy of.

12 MR. EKSTRAND: Correct.

13 MR. ELLIS: Thank you very much.

14 MR. EKSTRAND: Actually, let's go ahead  
15 and -- let's go ahead, and Stef will work out that --  
16 I'm going to hand you what we'll mark as Kennedy 7.

17 (Kennedy 7 was marked for identification.)

18 (Kennedy 8 was marked for identification.)

19 BY MR. EKSTRAND:

20 Q. You familiar with either of those  
21 pictures?

22 A. Yes, both of them.

23 Q. What are they?

24 A. They are pictures of a demonstration  
25 outside the house, I believe, Sunday morning, the

1 26th.

2 Q. Okay. The house being?

3 A. 610 North Buchanan.

4 Q. Okay. And I see a couple banners  
5 pictographed there. What do these banners say?

6 A. "Give them equal measure and castrate."

7 Q. I see. And this is -- is outside of the  
8 house where the captains lived?

9 A. Correct.

10 Q. It's on Sunday morning or Sunday. "Give  
11 them equal measure." "Give them equal measure."  
12 What does that mean to you?

13 MR. ELLIS: Objection.

14 THE WITNESS: I can only guess that it  
15 means that -- that the players who allegedly  
16 committed or who committed this act, if it were  
17 committed, should be subject to some punishment  
18 equivalent to what they did to the alleged victim.

19 BY MR. EKSTRAND:

20 Q. Okay. All right. And in the alternative,  
21 that they be castrated?

22 A. Yes.

23 MR. ELLIS: Objection.

24 THE WITNESS: Which I'm familiar with this  
25 because I used it in the appeal to get the year of

1 eligibility back for the team.

2 BY MR. EKSTRAND:

3 Q. Okay. And we want to talk to you about  
4 that. But let me hear -- I know, the appeal you're  
5 talking about is the appeal to the NCAA?

6 A. Correct.

7 Q. And that was a document that you wrote?

8 A. Yes.

9 Q. And you wrote that to petition for what?

10 A. Extra year of eligibility to replace the  
11 2006 year for all the members of that team.

12 Q. Okay. And what was the gist of your  
13 argument in support of that rather remarkable brief?

14 A. The argument was that -- let me back up.  
15 There were no NC2A regulations or waivers that bore  
16 directly on that situation, but there was a broad  
17 kind of relief called a season of competition waiver,  
18 where eligibility could be restored if a team or  
19 student athletes are unable to participate for --  
20 because of circumstances outside their control.

21 And the argument I made was that the --  
22 that because of people like Addison and Nifong and  
23 the statements they made and the hysteria, the  
24 general hysteria, that it created a situation in  
25 which it was unsafe for the players to congregate in

1 an advertised place and that the season -- that one  
2 of the reasons that the season had to be canceled,  
3 and it's the one reason that I agreed with canceling  
4 the season, was that it wasn't safe and that it was  
5 analogous to Katrina. And I used that because there  
6 were teams in Katrina that played a number of games  
7 and got their season back.

8 Q. Okay. So what was happening in March and  
9 April of 2006 at Duke was, in your mind and in your  
10 argument, analogous to a devastating storm?

11 A. It was a different kind of storm.

12 Q. Okay. Let me hand you what we'll mark as  
13 Kennedy 9, and I want to ask you if Plaintiff's  
14 Exhibit 9 -- I don't think we need to. This page is  
15 just the last page of --

16 MR. ELLIS: Is it the last page of this  
17 Exhibit 9 document?

18 MR. EKSTRAND: Yeah.

19 MR. ELLIS: So if I staple them together,  
20 it will be okay?

21 MR. EKSTRAND: Yeah. I think so, at  
22 least.

23 (Kennedy 9 was marked for identification.)

24 BY MR. EKSTRAND:

25 Q. Now, do you recognize this document?

1 A. Yes.

2 Q. What is it?

3 A. It's the appeal to the NC2A for an extra  
4 year of eligibility.

5 Q. Who wrote this?

6 A. I did.

7 Q. Okay. Did you submit this directly to the  
8 NCAA?

9 A. I did not. It went through university  
10 counsel's office, and they submitted it.

11 Q. Okay. Did you -- did they submit it as  
12 you had written it?

13 A. No.

14 Q. What changed?

15 A. I'd have to go back and look at it again  
16 to say exactly, but they -- they redacted it  
17 somewhat. They eliminated some things.

18 Q. Do you recall what it was? You don't have  
19 to point to the paragraph, if you can remember the  
20 nature of what it was they took out.

21 A. I was trying to establish that the threats  
22 of various levels to the players were -- were  
23 ubiquitous, and one section of the appeal referred to  
24 what went on on campus during that spring, which  
25 included students confronting players and faculty



1 members confronting them in class.

2 (Off-the-record discussion.)

3 MR. EKSTRAND: Sorry about that.

4 BY MR. EKSTRAND:

5 Q. Okay. So, and I don't know if I heard the  
6 whole thing. What was it exactly that was taken out  
7 or --

8 A. I can't tell you exactly because I have to  
9 go back and compare, and I haven't looked at that one  
10 in years. I know that the section on the way they  
11 were treated on campus was removed.

12 Q. Okay. So, and how did you characterize  
13 that, generally?

14 MR. ELLIS: Objection.

15 THE WITNESS: In the document?

16 BY MR. EKSTRAND:

17 Q. In the documentation, yeah.

18 A. I just said that -- the point I was trying  
19 to make was that there was no refuge for them in some  
20 ways, that feelings were so high, that even on their  
21 campus with their fellow students, there was this  
22 level of, not among all students, but there was a  
23 level of animosity and of anger and of presumption of  
24 guilt.

25 Q. Do you think that that animosity, anger,

1 presumption of guilt was fueled at all by the  
2 statements of President Brodhead and John Burness?

3 MR. ELLIS: Objection.

4 THE WITNESS: I think that -- I think that  
5 there were a lot of sources of fuel.

6 BY MR. EKSTRAND:

7 Q. Were they two of them?

8 A. I can't speak for the people who were  
9 expressing these things, but it's possible.

10 Q. Okay. One of the things that is in your  
11 petition is this -- this myth that it emerged that  
12 there was -- the team was erecting a wall of silence?

13 A. Correct.

14 Q. Right. And what was your understanding  
15 about that with respect to the team in terms of were  
16 they erecting a wall of silence, or what did you  
17 know?

18 MR. ELLIS: Objection.

19 THE WITNESS: I knew that the captains had  
20 helped the police search the house, freely given  
21 statements without counsel present and had cooperated  
22 to the full extent that they could cooperate.

23 BY MR. EKSTRAND:

24 Q. And did you also know that every member of  
25 the team had submitted their DNA samples?

1           A.    Yes.

2           Q.    Voluntarily?

3           A.    Yes.

4           Q.    And you also were aware that that's

5 exactly what the police said would establish whether

6 anyone was guilty or not?

7           MR. ELLIS:  Objection.

8           THE WITNESS:  Correct.

9   BY MR. EKSTRAND:

10          Q.    All right.  Do you have a copy of the

11 final submission to the NCAA --

12          A.    Yes.

13          Q.    -- the redacted?

14          A.    Yes.

15          Q.    Would you be --

16          MR. ELLIS:  I don't understand your

17 question.  What was your question?  I didn't

18 understand it.

19          MR. EKSTRAND:  He did.

20          MR. ELLIS:  But I need to understand it,

21 or I object.  Okay.

22          MR. EKSTRAND:  Let me -- I'm just --

23          MR. ELLIS:  You're just having a good

24 time.

25

1 BY MR. EKSTRAND:

2 Q. My question was: Do you have a copy of  
3 the final draft submitted to the NCAA that was  
4 redacted?

5 A. Yes.

6 MR. EKSTRAND: That make sense? He's  
7 testified that he wrote a petition against the double  
8 A.

9 MR. ELLIS: Right, and that there was some  
10 redaction.

11 MR. EKSTRAND: Specifically the treatment  
12 of the boys.

13 MR. ELLIS: And I understand you to be  
14 asking him, does he have a copy of the final thing  
15 that was submitted.

16 MR. EKSTRAND: To the NCAA.

17 MR. ELLIS: Right.

18 BY MR. EKSTRAND:

19 Q. Do you have a copy of that?

20 A. Yes, I do.

21 Q. All right. Would you be opposed at all to  
22 producing that to us?

23 A. No.

24 MR. ELLIS: Is this not it?

25 THE WITNESS: No.

1 BY MR. EKSTRAND:

2 Q. No. This is what -- let's clarify this.  
3 I'm glad you asked. What we have now is, as Kennedy  
4 9, is the document you drafted --

5 A. Correct.

6 Q. -- for the NCAA?

7 A. Correct.

8 Q. And that this document was subsequently  
9 redacted by somebody in the administration, counsel  
10 or --

11 A. I'm thinking counsel's office, yes.

12 Q. And your recollection is that they  
13 redacted your description of the boys' treatment on  
14 campus?

15 A. Yes.

16 Q. All right. Now, we're going to try to  
17 play something for you, and this is what we had  
18 already identified as 6.

19 MR. ELLIS: 6.

20 (Playing video.)

21 BY MR. EKSTRAND:

22 Q. Okay. Do you remember things like that  
23 going on?

24 A. I remember seeing news accounts like that,  
25 yes.

1 MR. ELLIS: Object to form of the  
2 question. Also object to the video.

3 MR. EKSTRAND: On what basis?

4 MR. ELLIS: It didn't appear to start at  
5 the beginning, and it jumped around. And I cannot,  
6 having never seen that before, I cannot make any  
7 judgment about its --

8 MR. EKSTRAND: Well, you need to get into  
9 all the discovery we've produced because we've  
10 produced it to you.

11 MR. ELLIS: Counsel, I cannot vouch for  
12 the integrity of that video, so I object to it. If  
13 its integrity is sound, my objection is worthless.  
14 If it's not, my objection is good. That's it.

15 BY MR. EKSTRAND:

16 Q. All right. Let's get -- let's make sure  
17 that the integrity of the video is verified here.  
18 You remember anything like that?

19 A. Yes.

20 Q. Just like that?

21 MR. ELLIS: Objection.

22 THE WITNESS: I don't know what "just like  
23 that" means. I remember seeing TV news accounts of  
24 things like that and confrontation with Provost Lange  
25 outside his house, demonstrations like that, yes.

1 BY MR. EKSTRAND:

2 Q. And that was on Sunday, the 26th?

3 A. Yes.

4 Q. And that was outside the captains' house?

5 A. Yes.

6 Q. Do you think that that noise they were  
7 making was consistent with the surrounding area and  
8 conducive to the enjoyment of quiet living in that  
9 area?

10 MR. ELLIS: Objection.

11 THE WITNESS: No.

12 BY MR. EKSTRAND:

13 Q. Okay. Weren't any lacrosse players making  
14 that noise, were there?

15 MR. ELLIS: Objection.

16 THE WITNESS: Not at that time.

17 BY MR. EKSTRAND:

18 Q. All right. So is that the kind of thing  
19 that you had written about in your petition to the  
20 NCAA or were referring to, not the event itself, but  
21 that kind of --

22 A. Well, they have had, in that, that one of  
23 the appendices to this appeal was the picture of the  
24 castrate banner.

25 Q. Oh. Okay. Right. So these -- the list



1 of appendices, these are all documents and things  
2 that you submitted to the NCAA?

3 A. They're documents or pictures that I  
4 submitted to counsel's office.

5 Q. Right. Now, were any of these taken out?

6 A. I don't know.

7 Q. All right. So -- okay. When you got your  
8 copy of what was ultimately submitted to the NCAA,  
9 did it include attachments?

10 A. No.

11 Q. Okay. So you're not sure if the  
12 attachments went?

13 A. I don't know.

14 Q. All right. I direct your attention to  
15 footnote 8 of your petition to the NCAA. It's going  
16 to be on page 9.

17 A. Uh-huh.

18 Q. It refers to threats, and it says, "Many  
19 of the threats took the form of emails, which are  
20 available for review, but which are so vile in both  
21 language and the acts of retribution they describe,  
22 that we have elected not to include them."

23 Do you know if those emails still exist?

24 A. I don't have them.

25 Q. Okay. Do you know who does or who would?

Durham, NC

1 A. I don't.

2 Q. Okay. Now, that's referring to, as you  
3 say in your petition, "One consequence of this  
4 firestorm was a series of threats of various kinds  
5 against the lacrosse players." And that's what you  
6 say is sometimes in the form of emails so vile?

7 A. Correct.

8 (Kennedy 10 was marked for identification.)

9 BY MR. EKSTRAND:

10 Q. Let me hand you what we'll mark as 10.  
11 It's an email that is dated at the bottom -- just  
12 draw your attention to the email dated March 31st,  
13 2006, from Larry Moneta directed to students, all  
14 undergrad students at Duke. And the subject is  
15 "Safety Information." If you would -- well,  
16 actually, let me read it into the record and make it  
17 easy.

18 It says, "Dear Students, I write to inform  
19 you of a rumor I've just learned. I don't have a way  
20 of validating the credibility of the rumor, as it  
21 came to us third hand from the Durham police to  
22 various members of the Duke community. What we've  
23 learned -- what we've heard is threats of, quote,  
24 drive-by shooting, end quote, of the lacrosse house  
25 in the Trinity Park area. As of the time I write

1 this, approximately 9:00 p.m., we are aware of a  
2 gang-related shooting that took place this afternoon  
3 on Sedgefield Street in Walltown, several blocks from  
4 Trinity Park. We are assured by Durham police that  
5 this is not related to Duke in any way.

6 "We also have a report that passengers in  
7 a car yelled at Duke students in houses on Buchanan  
8 Street.

9 "I share this information with great  
10 discomfort. I neither want to create any sense of  
11 hysteria for the Duke and Trinity Park communities,  
12 nor withhold the existence of this information. We  
13 have spoken with several of the students who live in  
14 the houses and many have chosen to stay elsewhere  
15 tonight."

16 And then it goes on. It says,  
17 "Unfortunately, tensions are very high right now and  
18 may not abate for a while. I would anticipate  
19 further rumors and conflicting information, and we'll  
20 do our very best to keep you informed."

21 Did you ever hear of this threat of a  
22 drive-by shooting?

23 A. Yes, I used it as more evidence of the  
24 danger for the safety issues.

25 Q. Okay. In your NCAA petition?

1 A. Yes.

2 Q. Did students take it seriously or was this  
3 something that they just blew off?

4 A. I don't think I talked to anybody about  
5 that particular rumor.

6 Q. Okay. Let me hand you what we'll mark as  
7 11, Kennedy 11.

8 (Kennedy 11 was marked for identification.)

9 BY MR. EKSTRAND:

10 Q. This is a Duke University police  
11 Department report about an incident, an event on  
12 May 1st, 2006. Go ahead and read this.

13 Now, this refers to the Black Panther, New  
14 Black Panther Party and their demonstration  
15 at University Road and Chapel Drive. Do you remember  
16 this occurring?

17 A. Yes, I do.

18 Q. What do you remember about it, the New  
19 Black Panther Party coming to Duke?

20 A. I remember that we, at least, had the  
21 impression that they were going to be allowed on  
22 campus initially, and that they were even going to be  
23 allowed to March onto the lacrosse field, Koskinen  
24 Stadium. And some of the lacrosse parents had done  
25 some research about this group and were very

1 concerned about their presence on campus. And in  
2 fact, that day, which I think was May 1st --

3 Q. Uh-huh.

4 A. -- President Brodhead had scheduled to  
5 meet with the team, which he didn't want people to  
6 know about ahead of time. So I had scheduled a  
7 meeting for that afternoon, but the parents, a lot of  
8 the parents wanted their sons out of town.

9 Q. Yeah.

10 A. Because of the New Black Panthers. So  
11 some of them stayed in Central, some of them went up  
12 to Virginia, some of them -- they kind of dispersed  
13 for a day or so.

14 Q. Okay. What was your understanding about  
15 the purpose of the New Black Panther Party as they  
16 came to Duke that day?

17 MR. ELLIS: Objection. Objection.

18 THE WITNESS: Well, I think they  
19 expressed, and I know they expressed their -- no, I'm  
20 sorry. I didn't say that right. It was reported  
21 that they expressed their desire to enter campus, to  
22 interview the lacrosse players and to deal with them.

23 BY MR. EKSTRAND:

24 Q. All right. And did -- to your knowledge,  
25 did they have a history or reputation for engaging in

1 violence?

2 MR. ELLIS: Objection.

3 THE WITNESS: They -- I think they're  
4 documented by the, I've forgotten who now, as an  
5 armed hate group.

6 BY MR. EKSTRAND:

7 Q. All right. Now, this is May 1st, and this  
8 is getting to be around the time when the boys are  
9 able to leave and go home?

10 A. Correct, that was the week of exams.

11 Q. Right. Okay. But not everybody got to  
12 leave, right, Durham?

13 A. I'm not sure what you mean. I mean, some  
14 of the guys stayed around for summer school.

15 Q. Did anybody on the team live in Durham?

16 A. Matthew Wilson.

17 Q. Okay. Did you know Matthew Wilson prior  
18 to --

19 A. Yes.

20 Q. How long have you known Matthew Wilson?

21 A. Probably since he was in middle school, at  
22 least.

23 Q. Okay. Did you know him well?

24 A. Fairly well, yes.

25 Q. Did you know his family, his parents?



1 A. Very well.

2 Q. And that's Melinda Wilson and Peter  
3 Wilson?

4 A. Correct.

5 Q. And where did Peter Wilson work?

6 A. He worked in the Fuquay School of Business  
7 at Duke.

8 Q. Does he still work there?

9 A. He does not.

10 Q. Where are they now?

11 A. Up in Massachusetts somewhere.

12 Q. All right. What was -- did you have --  
13 did you have an opportunity to observe what it was  
14 like for Matt Wilson to remain here in Durham over  
15 that summer or to have the circumstance of having his  
16 family in Durham throughout this?

17 A. I didn't really -- I didn't observe it,  
18 and I wasn't really aware of the implications of it  
19 until some time later.

20 Q. Okay. And what did you understand that to  
21 be?

22 MR. ELLIS: Objection.

23 THE WITNESS: I understood that he, in  
24 particular, and the family felt that they really  
25 couldn't escape that media community firestorm,



1 that -- and that other guys could go to -- back to  
2 Long Island and, you know, be out of the eye of the  
3 storm, that they weren't able to do that.

4 BY MR. EKSTRAND:

5 Q. Would you feel like that was -- that was  
6 the case? Do you agree with that sense of things?

7 A. Yes, yes.

8 MR. ELLIS: Objection.

9 BY MR. EKSTRAND:

10 Q. All right. Let me just hand you what is  
11 marked as Plaintiff's Exhibit 12 and 13 and 14.

12 (Kennedy 12 was marked for identification.)

13 (Kennedy 13 was marked for identification.)

14 (Kennedy 14 was marked for identification.)

15 MR. ELLIS: Is this 14?

16 MS. SPARKS: Yes.

17 MR. ELLIS: You gave me a copy that you  
18 had written on. Did you want me to have that?

19 MR. EKSTRAND: No, I wanted you to have  
20 that to know that it was 14.

21 MR. ELLIS: Okay. Thank you.

22 BY MR. EKSTRAND:

23 Q. Exhibit 12 is a document with masthead  
24 Durham Police Department on it. Are you familiar  
25 with that document?

1 A. Yes.

2 Q. What is it, as you recall?

3 A. I don't know if -- yeah, I guess it was a  
4 CrimeStoppers document. It was, as I recall, one of  
5 the first real inflammatory statements that was made.

6 Q. Well, how so?

7 A. Because it states with a certainty that  
8 the victim was sodomized, raped, assaulted and  
9 robbed, and it was a horrific crime.

10 Q. Right. And then if you would look at,  
11 actually, jump to number 14, and it's an Internet  
12 advertisement for a motivational poster,  
13 quote/unquote. Have you seen this before?

14 A. I think so.

15 Q. Do you know who that is pictured in that  
16 poster?

17 A. I think it's Matt Danowski.

18 Q. Okay. And it's entitled "Teamwork." And  
19 the subtitle is "You drag her to the bathroom, I'll  
20 guard the door." Right? This is a commercial  
21 website selling this poster. And it's May 3rd, 2006  
22 is printed, right?

23 A. Correct.

24 Q. So that poster's available May 3rd, 2006.  
25 And let me just -- let me just ask you, in context,

1 when did the DNA come back in this case?

2 A. My recollection is that it was mid-April.

3 Q. Right. And those -- the DNA I'm talking  
4 about are the tests that were conducted with the  
5 products of the nontestimonial identification order?

6 A. Correct.

7 Q. And that order was issued on the premise  
8 that DNA test would show who is guilty and who isn't?

9 A. Correct.

10 Q. And did anybody's DNA match any of the DNA  
11 found in the rape kit?

12 A. No.

13 Q. Any DNA from any member of the team match  
14 any DNA found on Crystal Mangum's clothes?

15 A. No.

16 Q. Any evidence in the case?

17 A. No.

18 Q. And in light of that horrific and violent,  
19 30-minute gang rape in which the victim was quote,  
20 sodomized, raped and assaulted and robbed, did it  
21 strike you as compelling fact that there was no DNA  
22 found on her matching any member of the men's team?

23 MR. ELLIS: Objection.

24 THE WITNESS: Yes.

25

1 BY MR. EKSTRAND:

2 Q. All right. Did the administration return  
3 the team to play when those DNA results came back?

4 A. No.

5 Q. No?

6 A. No.

7 Q. Why?

8 A. I don't know.

9 MR. ELLIS: Objection.

10 BY MR. EKSTRAND:

11 Q. Okay. Did anybody confer with you about  
12 that?

13 A. No.

14 Q. But you're in charge -- you're the  
15 administrator who oversees this team?

16 A. That was correct.

17 Q. And you also had personal knowledge of  
18 their character and their -- their history?

19 A. Yes.

20 Q. And nobody consulted with you?

21 A. No.

22 Q. Nobody called you up and said, Chris, what  
23 are these guys like?

24 A. No.

25 Q. Are they capable of this?

1 A. No.

2 Q. Well, let me ask you: Are any of those  
3 boys capable of a 30-minute gang rape that's racially  
4 motivated and involves sodomy, rape, assault and  
5 robbery?

6 MR. ELLIS: Objection.

7 THE WITNESS: Absolutely not.

8 BY MR. EKSTRAND:

9 Q. That's a small house over there. Well,  
10 it's torn down now, but it was a small house, wasn't  
11 it?

12 A. Yes.

13 Q. Hard to have a 30-minute gang rape that  
14 involved sodomy, rape, assault and robbery without  
15 anybody else knowing about it, right?

16 A. I would think so.

17 Q. Okay. And what do you think that the  
18 members of the team would do if they learned that  
19 anybody was assaulting a woman in a bathroom in their  
20 presence or near their presence or within their  
21 access?

22 A. They would have stopped it.

23 Q. Okay. How strongly do you feel about  
24 that?

25 A. Very strongly.

1 Q. Do you have any doubt --

2 A. No.

3 Q. -- that they would let it go on?

4 A. No.

5 Q. Okay. But nobody asked you about that,  
6 did they?

7 A. No.

8 Q. All right. Brodhead never called you?

9 A. No.

10 Q. Did Burness ever call you --

11 A. No.

12 Q. -- and ask you, what are these guys really  
13 like?

14 A. No.

15 Q. I'm going to hand you what is going to be  
16 marked as 15.

17 (Kennedy 15 was marked for identification.)

18 BY MR. EKSTRAND:

19 Q. And this is an article posted by WRAL.  
20 It's dated April 20th, 2006, which I think is 10 days  
21 after the DNA results were published and made known  
22 to the accused.

23 This is a quote, I believe, of President  
24 Brodhead, right, in the third, one, two, the fourth  
25 paragraph? Could you read that into the record, just

1 the fourth paragraph?

2 A. "If I -- students did what is alleged, it  
3 is appalling to the worst degree. If they didn't do  
4 it, whatever they did was bad enough."

5 Q. All right. How about that? What do you  
6 think about that public statement from the president  
7 of the university?

8 MR. ELLIS: Objection.

9 THE WITNESS: I think that someone without  
10 any knowledge of any of the facts, someone on the  
11 outside would again draw the conclusion that some  
12 kind of crime had been committed and that Brodhead  
13 believed they were guilty. And furthermore, I think  
14 it was incredibly indiscreet to say whatever they did  
15 was bad enough.

16 BY MR. EKSTRAND:

17 Q. Right. There it is. And that is again  
18 ten days after the DNA tests did exactly what that  
19 NTID said it would do. Okay.

20 MR. ELLIS: Objection.

21 THE WITNESS: (No response.)

22 BY MR. EKSTRAND:

23 Q. Let me hand you -- it's already marked.  
24 We've already marked this. We haven't talked  
25 about -- I'm going to say it's 13. It has a picture



1 of two assault rifles on the front page. You see  
2 that?

3 A. Yes.

4 Q. Dated Saturday, April 1st, 2006. And  
5 caption is "We all know money can buy us out of most  
6 situations, but one way or another, they will suffer  
7 for this."

8 You familiar with this document?

9 A. I'm not.

10 Q. You familiar with the website "Justice for  
11 Her"?

12 A. I've heard of it. I've never visited it.

13 Q. Okay. Just flip through. I want you to  
14 take a look at some of the details that they've  
15 posted and ask you a couple questions. So when you  
16 get to page 22487, let me know.

17 A. Okay.

18 Q. Okay. At the top, it says, "Peter and  
19 Melinda Wilson, parents of Matt Wilson." And then  
20 what does it say?

21 A. Gives their Durham address and their phone  
22 number.

23 Q. How about that? Is that a correct  
24 address, as far as you know?

25 A. Yes.

1 Q. Is that a correct phone number, as far as  
2 you know?

3 A. Yes.

4 Q. Those two assault rifles on the front  
5 page?

6 A. Yes.

7 Q. Is Matt the only one that lives in Durham  
8 in the summer of 2006?

9 A. Yes.

10 Q. All right.

11 A. No -- well, to be accurate, some of the  
12 guys were in summer school.

13 Q. The family, whose family lives in Durham?

14 A. His family, yes.

15 MR. EKSTRAND: Let's take a five-minute  
16 break and then come on back and finish up. Okay?

17 (A recess transpired from 3:09 p.m. until  
18 3:16 p.m.)

19 BY MR. EKSTRAND:

20 Q. We ready? Dr. Kennedy, I want to ask you,  
21 instead of going through this whole thing, maybe that  
22 the narrative in the petition that you wrote to --  
23 for the NCAA's consideration, was all of what you  
24 read -- wrote true to your own knowledge or belief?  
25 Did you believe it to be true? Did you know it to be

1 true?

2 A. If I didn't, I wouldn't have written it.

3 Q. Is there anything that's changed in that  
4 regard since the time you wrote it?

5 A. No.

6 Q. Do you recall if there was anything about  
7 the redacted sections that was incorrect or otherwise  
8 untrue?

9 A. No, but I haven't looked at it in years.

10 Q. Okay. Fair enough. Now, around about  
11 April 5th, it was a big day, right?

12 A. Yes.

13 Q. What happened that day?

14 A. Well, a number of things. But the most  
15 widely publicized were Ryan McFadyen's -- the release  
16 of Ryan McFadyen's email and Pressler's resignation.

17 Q. Okay. Both of those things happened on  
18 April 5th?

19 A. Yes.

20 Q. Was Ryan suspended from the university  
21 that day?

22 A. Yes.

23 Q. Okay. Did they conduct a hearing to  
24 determine --

25 A. Not to my knowledge.

1 Q. Did -- to your knowledge, did Ryan ever  
2 authorize the university or did the university have  
3 his authorization to disclose educational information  
4 about his status as a student?

5 A. Not that I know of.

6 Q. To your knowledge, did the university do  
7 it anyways?

8 A. I don't know how that was released.

9 Q. Okay. Let's -- there might be something  
10 to show you here to refresh your memory here in a  
11 minute, but how did you learn that Ryan was  
12 suspended?

13 A. We had -- Joe Alleva and I had been  
14 meeting with Pressler that morning to talk about  
15 practice. And we finished that meeting at about  
16 11:00 o'clock or so and Joe got a call to go up to  
17 the Allen Building. And he came back maybe an hour  
18 later, telling me about the email and that he was to  
19 instruct Pressler either to resign or be suspended,  
20 which would lead to him being fired. We couldn't  
21 find Pressler for a while because he was out looking  
22 for Ryan.

23 Q. Why was Coach looking for Ryan?

24 A. I think he was concerned for him.

25 Q. His safety or --

1           A.    His safety, his mental health, his -- just  
2    his general welfare.

3           Q.    Okay.  Let me hand you what we'll mark as  
4    16, Kennedy 16.

5                   (Kennedy 16 was marked for identification.)

6    BY MR. EKSTRAND:

7           Q.    This is another Duke University News and  
8    Communications memo updated.  It's entitled  
9    "Statement on Release of Sealed Warrant and  
10   Cancellation of Men's Lacrosse Season from President  
11   Brodhead," dated April 5th, 2006.  And the statement  
12   of President Brodhead is that the Court released  
13   today a previously sealed warrant, whose contents are  
14   sickening and repulsive.

15                   "I have canceled the men's lacrosse season  
16   and all associated activities, effective immediately.  
17   Lacrosse Coach Mike Pressler has submitted his  
18   resignation to Athletics Director Joe Alleva,  
19   effective immediately.

20                   "Typically, we are prohibited under  
21   federal privacy regulations from releasing  
22   information regarding individual student disciplinary  
23   matters.  In this case, a student named in the  
24   warrant has signed a release and given us permission  
25   to say that he has received an interim suspension.

1 As a result of the interim suspension, the student is  
2 no longer on campus.

3 "I once again urge everyone with  
4 information pertinent to the events of March 13th to  
5 cooperate with the authorities."

6 There it is again. "Once again, I urge  
7 everyone with information pertinent to the events to  
8 cooperate with authorities." Do you know why that  
9 seems to be a tag line in all these statements of  
10 President Brodhead?

11 MR. ELLIS: Objection.

12 THE WITNESS: No.

13 BY MR. EKSTRAND:

14 Q. What does it convey to you?

15 A. It conveys to me that the belief that  
16 there is information, that the events of March 13th  
17 were, in fact, as alleged, and that people are  
18 withholding that information.

19 Q. Kind of fits with the stone wall of  
20 silence?

21 MR. ELLIS: Objection.

22 THE WITNESS: Correct.

23 BY MR. EKSTRAND:

24 Q. All right. Let me just -- we're going to  
25 play a video we'll mark -- we'll call Kennedy 17.

1 All right. We're going to have to sort this out.

2 All right.

3 So it's April 5th. There's a reference to  
4 contents of a sickening repulsive email. You're an  
5 English professor, right?

6 A. Correct.

7 Q. Okay. Do you know a book called American  
8 Psycho?

9 A. I do not.

10 Q. Okay.

11 A. Well, I didn't up till then.

12 Q. Okay. Are you aware that it was at the  
13 time and may still be taught in the English  
14 department at Duke University?

15 A. I have seen that.

16 Q. What is the genre of that book?

17 A. I don't know.

18 Q. Would it be American gothic perhaps? Is  
19 that a genre?

20 A. I don't know about the book. The only  
21 thing I know about it is Ryan's quotation or Ryan's  
22 parody of it.

23 Q. Okay. Are you familiar with the main  
24 character in the book and his fascination with Phil  
25 Collins and Genesis?



1 A. No.

2 Q. Did Duke release the reply or any replies  
3 to the email that it found -- that President Brodhead  
4 found so sickening and repulsive?

5 A. Not to my knowledge.

6 Q. Are you aware that one of the replies was,  
7 "I'll bring the Phil Collins"?

8 A. I may have seen that at some point, yeah.

9 Q. All right. Would it be fair to say that  
10 somebody in the English department at Duke University  
11 would have known that this was a reference to a book  
12 that they taught?

13 A. Certainly would have been possible.

14 MR. ELLIS: Objection.

15 BY MR. EKSTRAND:

16 Q. Okay. Did anybody from the English  
17 department or anywhere else at Duke University make  
18 any kind of a statement or make anybody aware that  
19 you know of that this was very much a parody of a  
20 well-known book and the central character's  
21 perseverance?

22 MR. ELLIS: Objection.

23 THE WITNESS: Not that I know of.

24 BY MR. EKSTRAND:

25 Q. Okay. And I mean ever, from April 5th

1 till now?

2 MR. ELLIS: Objection.

3 THE WITNESS: Not that I've ever seen.

4 BY MR. EKSTRAND:

5 Q. Okay. Now, the university -- it says,  
6 "student disciplinary matters" in this. You've  
7 already testified that you're not aware of any  
8 release from Ryan McFadyen to -- as the president  
9 said he had one?

10 A. I simply don't know.

11 MR. ELLIS: Objection.

12 BY MR. EKSTRAND:

13 Q. Okay. But let's talk about this. If --  
14 suspensions from the university at Duke, what -- is  
15 that just a discretionary thing that the Dean or some  
16 president gets to decide or somebody?

17 A. I don't know the exact stipulations with  
18 suspension policy.

19 Q. All right. Now, but let me ask you this.  
20 You refer to the suspension policy. That's something  
21 that exists?

22 A. I know there is a policy that if someone  
23 is charged -- I learned it through this -- that if  
24 someone is charged with a felony, they're suspended.

25 Q. Okay. Is that written down somewhere?

1 A. I would be surprised if it weren't.

2 Q. All right. Now, just to be clear, are you  
3 aware of whether or not there was any hearing  
4 conducted for Ryan before this suspension?

5 A. I'm not aware of any hearing.

6 Q. He wasn't charged with a felony, was he?

7 A. No.

8 Q. To your knowledge, why was he suspended?

9 A. I don't know.

10 Q. But he was suspended effective  
11 immediately?

12 A. Yes.

13 Q. And Coach Pressler was looking for him?

14 A. Yes.

15 Q. As that news came out?

16 A. Yes.

17 Q. Did you have any occasion to talk to Ryan  
18 about that?

19 A. Not before he left.

20 Q. How soon did he leave?

21 A. That day.

22 Q. Okay. Were you concerned about his safety  
23 or wellbeing?

24 A. Yeah.

25 Q. Okay. Why?

1           A.    I was concerned about all of them.  But  
2   then, you know, that -- that was certain to bring  
3   heightened attention to him, which it has and  
4   continues to do.

5           Q.    How do you mean?

6           A.    I know that the last time I talked to him,  
7   he was talking about changing his name.

8           Q.    Really?

9           A.    Yeah.

10          Q.    Why was he talking about that, do you  
11   know?

12          A.    Because I -- my understanding is that  
13   he -- when he applies for jobs or makes inquiries  
14   about employment or something, that people will  
15   Google his name, and that ends it right there.

16          Q.    Okay.  Now, you know Ryan McFadyen?

17          A.    Yes.

18          Q.    You've known him for a while?

19          A.    Yes.

20          Q.    You knew him before this happened?

21          A.    Yes.

22          Q.    What do you think about Ryan McFadyen?

23          A.    I love Ryan McFadyen.

24          Q.    Why?

25          A.    I think he's -- he's an intelligent, very

1 funny, interesting young man. He's very  
2 compassionate. He's 6'7", and -- but a much more  
3 sensitive person than you would think from looking at  
4 him because he's enormous.

5 Q. Right. Did anybody ask you about Ryan  
6 McFadyen before he was suspended?

7 A. No.

8 Q. Did they -- anybody ask you about Ryan  
9 McFadyen while he was suspended?

10 A. No.

11 Q. Now, that same day, very much all of the  
12 piece with the suspension of Ryan McFadyen, what is  
13 the threat to Pressler, you said, to either resign or  
14 be suspended pending termination, right?

15 MR. ELLIS: Objection.

16 THE WITNESS: Right.

17 BY MR. EKSTRAND:

18 Q. Right. And there was also, as we've read,  
19 the cancellation of the season?

20 A. Yes.

21 Q. Okay. These were all decisions apparently  
22 made, or at least most of them were made by President  
23 Brodhead, right?

24 MR. ELLIS: Objection.

25 THE WITNESS: Yes.

1 BY MR. EKSTRAND:

2 Q. And President Brodhead didn't confer with  
3 you about any of this?

4 A. No.

5 Q. Seek your advice or knowledge?

6 A. No.

7 Q. All right. If he had, would you suggest  
8 that he take that course of action?

9 A. No.

10 Q. Why not?

11 A. I thought that it was impulsive and  
12 reactive rather than well thought out.

13 Q. Right. And on April 5th, did you know or  
14 not that the DNA tests were due back any day now?

15 A. I don't remember what I knew that day.

16 Q. You subsequently found out that they were  
17 already back, right?

18 A. Yeah, I don't remember the dates.

19 Q. Okay. Now, let's just talk about those  
20 decisions for a minute. You -- we have a team of  
21 players who have been through this well-termed  
22 maelstrom that you've described for weeks?

23 A. Right.

24 Q. And that culminates with the termination  
25 of their coach, the suspension and public

1 evisceration of their teammate?

2 MR. ELLIS: Objection.

3 BY MR. EKSTRAND:

4 Q. And the cancellation of their season?

5 MR. ELLIS: Objection.

6 THE WITNESS: Well, not just the  
7 cancellation of the season, but the suspension of the  
8 program.

9 BY MR. EKSTRAND:

10 Q. Explain that.

11 A. That is -- there was some thought being  
12 given to whether or not lacrosse should even continue  
13 to be sponsored at the university.

14 Q. And how did that materialize? Was that a  
15 real live discussion that was publicly vetted or  
16 announced?

17 A. No -- well, what was announced that day --  
18 as you said, there was a lot going on that day. The  
19 president announced five commissions or committees.  
20 I've forgotten what they call them, one of which was  
21 the Coleman Committee, which was going to evaluate  
22 the lacrosse program and decide whether or not  
23 lacrosse would continue.

24 Q. Okay. As a program?

25 A. Or if it did, under what circumstances.



1           Q.   All right.  What was -- what were the  
2   effects of -- this is all being done in a day at the  
3   culmination of weeks of excruciating scrutiny to  
4   young men that you've described with high praise.  
5   What -- what were the effects that you saw of those  
6   decisions on them?

7           MR. ELLIS:  Object, including the  
8   preamble.

9           THE WITNESS:  Well, you had 47  
10  individuals, so there was a spectrum of reaction, and  
11  there was a spectrum of expression of it, that is,  
12  there were some guys that you would never know what  
13  they were thinking.  And there were others, their  
14  hearts were right there (Indicating).

15  BY MR. EKSTRAND:

16           Q.   Indicating your arm?

17           A.   Yeah.  And the range, all the range in  
18  between.  But they were a team.  And they kind of  
19  confronted this as a team, starting with the junior  
20  class.  You know, the junior class got together and  
21  said, "No matter what happens, if they suspend our  
22  program or not, we're staying at Duke next year.  
23  We're going to graduate from Duke."

24                   And that sort of radiated throughout that  
25  whole group that, as I said before, we're going to

1 worry about the things we control. And then we're  
2 going to make decisions about -- we're going to make  
3 rational decisions about our future. And I talked to  
4 a lot of them about what the possibilities were.

5 Q. And their coach had been fired, or  
6 resigned under those conditions?

7 A. Yes.

8 Q. What role -- what role did he play in  
9 their lives as people?

10 MR. ELLIS: Objection.

11 THE WITNESS: Leading up to that?

12 BY MR. EKSTRAND:

13 Q. Uh-huh.

14 A. Well, you know, the -- one of the changes,  
15 you know, very early, I talked about how much college  
16 athletics has changed. And one of the things that's  
17 changed the most is the growth of the importance of  
18 the coach in the lives of student athletes because  
19 they never get away from the guy. There are no  
20 off-seasons anymore, particularly in basketball and  
21 football. There's summer conditioning, so they never  
22 go home.

23 So if they form a relationship with a  
24 faculty member that's particularly close, they might  
25 take three classes with him or her or maybe do a

1 thesis or something. They see their coach every day,  
2 virtually every day. And the coach controls a great  
3 deal of their life in terms of, first of all, the  
4 things they value most, which is the opportunity to  
5 play. But also, scholarship, you know, the coach's  
6 demeanor, the way the coach treats them can color  
7 their whole existence. And I mean, the coach is in a  
8 position of tremendous power and authority, part of  
9 it just by virtue of his position. Part of it --  
10 most of it, though, by virtue of who he is and how he  
11 interacts with them.

12           And I mean, I can tell you from my son's  
13 experience, he loved Coach Pressler. And he loved  
14 Coach Pressler not because Coach Pressler treated him  
15 great all the time or because Coach Pressler told him  
16 what he wanted to hear. He loved him because he  
17 pushed him hard and he made him work. And my son  
18 felt that he was a better person for his association  
19 with Coach Pressler. And to this day, he has  
20 enormous respect for him. And that -- that sentiment  
21 pretty much permeated that team.

22           Q. All right. And he was, as of April 5th,  
23 gone?

24           A. He was no longer their coach. He was  
25 still around. He was still in town. He showed up in

1 the office from time to time, but as their coach, he  
2 was gone.

3 Q. Okay. Did you perceive -- what did you  
4 perceive the effect of all that change on those boys  
5 or the potential effect on those boys at that time?

6 A. You know, I was worried about -- there's  
7 another range in that group, too, in that you have  
8 18-year-olds and you have 22-year-olds, 23-year-olds  
9 who are -- and the older guys were better equipped to  
10 handle this, although nobody was equipped to handle  
11 what happened that spring.

12 So I was concerned about all kinds of  
13 issues. I was concerned about their academic  
14 performance. I was concerned about -- I was  
15 concerned about their safety. I was concerned about  
16 their, you know, mental stability, not, I wouldn't  
17 think anybody was going to kill themselves or  
18 anything, but I really thought, I mean, they were  
19 suffering.

20 And you know, they were -- they were  
21 consistently, constantly branded as rapists or  
22 misogynists or rapists or racists, or at the very  
23 least, covering up for it. And they were branded  
24 that way. And local media, on campus, on Nancy  
25 Grace, in every possible form of communication they

1 would turn on and find out that they were the worst  
2 scum of the earth.

3 That's pretty hard for an 18-year-old kid  
4 away from home to deal with. And then, you know, one  
5 of the greatest supports, their coach, is gone.

6 Q. And the program was suspended  
7 indefinitely?

8 A. They had -- they didn't have the thing  
9 that -- the thing that most bound them together  
10 anymore.

11 Q. All right. Now, did you have any  
12 opportunity to -- well, let me ask you this: Were  
13 you present at all when that decision, the fact that  
14 the coach was now going to be resigning, was given to  
15 the team, delivered to the team?

16 A. Yes.

17 Q. Okay. What was that? How did that  
18 happen?

19 A. Pressler was over in our offices meeting  
20 with Joe Alleva. He brought his attorney. Joe had  
21 delivered the message that he had to resign or be  
22 suspended in the middle of the day, somewhere around  
23 the middle of the day. Pressler went to get his  
24 attorney and agreed to come back at, I think, 3:00  
25 o'clock, but I'm not sure.

1           And he and his attorney went in and met  
2 with Joe, and Trask came and sat in my office. And  
3 so they were negotiating some kind of a severance  
4 package. And a couple of times, Joe came out and  
5 came in to consult with Trask about here's what --  
6 and I don't remember the details of what they were  
7 talking about, but eventually, they came to some kind  
8 of agreement.

9           And by then, it was 4:00 o'clock when  
10 Pressler had told the assistants to get the team  
11 together in the squad room. So he and I went over to  
12 the squad room to talk to the team.

13           Q.    Okay. Were you present at all when --  
14 when Joe or Coach told Joe, what about the truth? We  
15 know this didn't happen?

16           A.    That was that morning when we were  
17 talking --

18           Q.    Do you remember that?

19           A.    Yes, when we were talking about practice.

20           Q.    And this is when Joe delivered the  
21 message?

22           A.    No, that was before everything. We were  
23 just talking about what -- where were we going to  
24 practice? Where were we going to practice for the  
25 next couple of days? Because Joe didn't want them to



1 practice, and Pressler thought if we went over to 751  
2 where nobody could see you or we just lift on this  
3 day. And the conclusion of that meeting was, okay,  
4 go ahead. And the season hadn't been suspended at  
5 that point. They were still talking about playing at  
6 Ohio State that weekend.

7 Q. That's right. So how did the conversation  
8 come about where Coach Pressler says to Joe, "We know  
9 what the truth is. They didn't do this. This didn't  
10 happen," whatever. How did -- what happened?

11 MR. ELLIS: Objection.

12 THE WITNESS: I don't remember. It was in  
13 that context of should they continue to practice.  
14 And I've forgotten the exact exchange. I think  
15 Pressler said something about, you know, we know --  
16 the DNA is going to come out any day now. The truth  
17 will come out. And Joe said something like, and I  
18 know this is quoted in Pressler's book, but I don't  
19 -- I can't attest to the complete accuracy of it, but  
20 he did say something like, you know, "Mike, it's not  
21 about the truth anymore. It's the special interest  
22 groups. It's about the NAACP and the community," and  
23 I forget all whom he named. But by the -- but the  
24 term -- but the result of the meeting was they were  
25 going to continue to practice through the week.



1 BY MR. EKSTRAND:

2 Q. Through the season?

3 A. Yes.

4 Q. So at 4:00 o'clock or so when the team  
5 gathered to meet in the squad room, were you present  
6 for that announcement?

7 A. Yes.

8 Q. What did you observe in there?

9 A. Well, the team, I mean, it was an unusual  
10 thing to be summoned for a meeting on such short  
11 notice. They knew something was up. We walked in,  
12 and Mike just said right out, you know, "For the good  
13 of the program, I have decided to resign." And they  
14 were shocked. They were shocked.

15 Q. Was that a true statement that he had  
16 decided to resign?

17 A. It was true in the sense that his decision  
18 was to resign or be suspended.

19 Q. Right. Okay.

20 A. He didn't wake up that morning thinking,  
21 I'm going to resign today for the good of the  
22 program.

23 Q. Okay. And what did you observe the impact  
24 of that was on the team?

25 A. Powerful.

1 Q. How so?

2 A. Again, 47 individuals, so there are a lot  
3 of different -- well, there are 46 because Dan  
4 Theodoridis came in late. There was a range of  
5 reactions, but they -- Pressler's book describes it  
6 as screaming and yelling. I didn't remember any  
7 screaming and yelling, but I remember absolute shock,  
8 and guys were crying, you know, had their heads down  
9 and had their hands on their faces -- their faces in  
10 their hands. I mean, it was very, very painful for  
11 them.

12 Q. Well, after that, the team did not  
13 practice together?

14 A. Correct.

15 Q. They did not play together any game?

16 A. Correct.

17 MR. ELLIS: Object.

18 BY MR. EKSTRAND:

19 Q. And at that same time, the university  
20 started to -- initiated ad hoc committees to  
21 investigate the team?

22 A. Yes.

23 MR. ELLIS: Object.

24 BY MR. EKSTRAND:

25 Q. Now, all this has happened already. It's

1 April 5th, and you have oversight over the team,  
2 right?

3 A. Yes.

4 Q. You know these boys, right?

5 A. Yep.

6 Q. You've known them for many years?

7 A. In some cases, yes.

8 Q. Your son has been a teammate of many of  
9 theirs for four years?

10 A. Yes.

11 Q. And the administration has not consulted  
12 with you about these decisions?

13 A. No.

14 MR. ELLIS: Objection.

15 BY MR. EKSTRAND:

16 Q. Have not asked for your opinion about any  
17 of these things?

18 MR. ELLIS: Objection.

19 THE WITNESS: No. Now, the one  
20 possibility is that they asked Alleva what I thought,  
21 but I'm not -- he never said that to me.

22 (Kennedy 17 was marked for identification.)

23 (Kennedy 18 was marked for identification.)

24 BY MR. EKSTRAND:

25 Q. Okay. So Ryan was suspended that day.

1 And I want -- I want to show you as Kennedy 17 and  
2 18. And I'll take these, I guess, out of order, I  
3 think. But go ahead and review the documents and let  
4 me know when you're ready.

5 (Off-the-record discussion.)

6 BY MR. EKSTRAND:

7 Q. All right. Now, are you familiar with the  
8 content of these documents?

9 A. Yes.

10 Q. What's being described in these?

11 A. Two different emails. One's Ryan  
12 McFadyen's and the other email that was sent to Coach  
13 Pressler by a Duke student.

14 Q. All right.

15 A. No, I'm sorry. They're both -- they both  
16 reference the Duke student email, I'm sorry.

17 Q. Okay. All right. Now, what is the --  
18 what is the email -- I guess it's Exhibit 18. It's a  
19 March 27th, 2006 at 6:00 o'clock, roughly. That's  
20 forwarded message from Mike Pressler to you. What do  
21 you know about this email?

22 It says -- subject line says, "What if  
23 Janet Lynn were next?" And it's signed Chauncey  
24 Nartey. Who is Janet Lynn?

25 A. Janet Lynn was Mike Pressler's older

1 daughter.

2 Q. How old was she?

3 A. I think she was probably like a freshman  
4 in high school at the time.

5 Q. Okay. And Chauncey Nartey, who is he?

6 A. He was a Duke student.

7 Q. Really. Okay. And this was delivered on  
8 March 27th, 2006 to Mike Pressler. And then this  
9 Exhibit 17 is a police report, right?

10 A. Yes.

11 Q. Are you aware that Mike -- Mrs. Pressler  
12 reported this to the police?

13 A. Yes.

14 Q. Okay. And the narrative says,  
15 "Mrs. Pressler stated that they have been receiving  
16 numerous emails in reference to the Duke lacrosse  
17 team, which her husband coaches. Mrs. Pressler  
18 stated that they had previously received a harassing  
19 email from a Duke student named Chauncey Nartey.  
20 Mrs. Pressler stated they had handled that email  
21 through the student judicial board. Mrs. Pressler  
22 stated that the most recent email stated, 'What if  
23 someone had done this on your little Janet and  
24 Maggie? Shame on you. I would recommend the whole  
25 team expelled if you knew what was good for your

1 family.' Mrs. Pressler stated that Janet and Maggie  
2 are their daughters' names. Mrs. Presser stated that  
3 this email had come from Trasher Remailer, which is  
4 an anonymous email remailer. And then Investigator  
5 Smith of the Duke Police Department was advised on  
6 the incident."

7 Okay. So the sequence of emails from  
8 Mr. Nartey, were you made aware of these? Did Coach  
9 Pressler --

10 A. Yes, he forwarded the email to me.

11 Q. Okay. Did he make you aware of the others  
12 that are referred to in the report?

13 A. You know, there was so many emails flying  
14 around then. Probably.

15 Q. Okay. So did you view these statements as  
16 being threatening in any way?

17 A. Yes.

18 Q. Do you know if -- if either Mrs. or  
19 Mr. Pressler thought that they were threatening?

20 A. Yes.

21 Q. And what did -- what do you sense that the  
22 threat was in these emails? What was the gist of the  
23 threat?

24 A. It was a -- at least an implied threat to  
25 Janet Lynn. And "were next" is obviously a reference

1 to the rape allegation.

2 Q. And to his family?

3 A. Yes.

4 Q. And -- okay. And did you know if Coach  
5 Pressler made any efforts to keep his family's names,  
6 his daughters' names, out of the media or press or  
7 public knowledge?

8 A. I don't remember what he did exactly.

9 Q. Okay. So did Duke suspend on an interim  
10 basis or any basis Chauncey Nartey?

11 A. Not to my knowledge.

12 Q. In your understanding, do you know of  
13 anything that the student judicial board did in  
14 reaction to these threats?

15 A. As I remember, he had to write a letter of  
16 apology to Coach Pressler.

17 Q. Okay. Anything else?

18 A. Not that I know of.

19 Q. Okay. Let me hand you what we'll call 19  
20 and 20.

21 (Kennedy 19 was marked for identification.)

22 (Kennedy 20 was marked for identification.)

23 BY MR. EKSTRAND:

24 Q. And tell me when you're ready.

25 A. Okay.



1 Q. Okay. So on Exhibit 19, do you see  
2 Chauncey Nartey named as a recipient of an award?

3 A. Yes.

4 Q. That's a 2007 William J. Griffith  
5 University Service Award?

6 A. Yes.

7 Q. Do you know what that is?

8 A. I think it's a general award that's given  
9 at graduation for students whose leadership while  
10 they were undergraduates has distinguished them.

11 Q. All right. And so Chauncey Nartey got  
12 that award, 2007. And Exhibit 20 is a publication  
13 called "A Duke Conversation Making a Difference."

14 And it lists speakers and suggested  
15 readings. And if you go down to the very last  
16 paragraph on the first page of Exhibit 20, there are  
17 several things relating to Chauncey of interest to  
18 me. It's -- it says, "Chauncey Nartey Trinity '07 is  
19 a political science and public policy double major  
20 pursuing a minor in economics." Gives his history,  
21 and it says, "Chauncey has been active with Duke  
22 Student Government, the Africana Mentoring Program  
23 and his fraternity. He also serves on campus, the  
24 Campus Cultural Initiative Committee, a task force  
25 that is charged with recommending improvements to

1 student life and to campus culture."

2 Do you know who made appointments to the  
3 Campus Cultural Initiative Committee?

4 MR. ELLIS: Objection.

5 THE WITNESS: I believe that that was one  
6 of the five commissions or committees that was set up  
7 on April 5th.

8 BY MR. EKSTRAND:

9 Q. Right. And it says here, "Click here to  
10 read an article about Chauncey as part of the senior  
11 stories feature." Do you know about the senior  
12 stories feature?

13 A. I don't.

14 Q. Okay. Do you know Chauncey Nartey was  
15 invited to participate with President Brodhead in any  
16 kind of a speaking engagement?

17 A. My understanding is there was a speaking  
18 engagement down in Charlotte I think he was invited  
19 to participate in.

20 Q. So Chauncey and President Brodhead were  
21 together in a speaking engagement in Charlotte?

22 MR. ELLIS: Objection.

23 THE WITNESS: That's my understanding.

24 BY MR. EKSTRAND:

25 Q. And this happened after Chauncey

1 threatened Coach Pressler's daughters --

2 A. Yes.

3 Q. -- and his family? Okay. So back to  
4 April 5th, and what kind of came from that -- if I  
5 could mark this as 21.

6 (Kennedy 21 was marked for identification.)

7 BY MR. EKSTRAND:

8 Q. Take a moment to read this, Exhibit 21.  
9 And tell me when you've had a chance.

10 A. Yeah.

11 Q. Okay. Who wrote that?

12 A. Stephen Bryan.

13 Q. Who is that?

14 A. He was -- well, his title is here,  
15 Associate Dean of Students for -- and he runs the  
16 judicial process.

17 Q. Okay. So if a student is suspended from  
18 school, he's pretty much going to be involved?

19 MR. ELLIS: Objection.

20 THE WITNESS: If a student is accused of  
21 anything, he's going to be involved with Stephen  
22 Bryan.

23 BY MR. EKSTRAND:

24 Q. Okay. And this -- he opens by saying,  
25 "How does one write a reference for a student who has

1 90,400 results returned when his name is searched on  
2 Google with many of the identified websites  
3 denouncing his character."

4 Do you know what he's referring to? Are  
5 you familiar with what he's referring to?

6 MR. ELLIS: Objection.

7 THE WITNESS: Yes.

8 BY MR. EKSTRAND:

9 Q. What is that?

10 A. That's what I referenced earlier, that --  
11 that if you plug Ryan McFadyen spelled in that  
12 unusual way into a search engine, what you'll get are  
13 references to the email.

14 Q. And his suspension?

15 A. And his suspension from Duke, correct.  
16 And I would think that it's a lot more than 90,400 by  
17 now.

18 Q. It says at the end here, "After hearing  
19 from him, Ryan, one cannot help but see how his  
20 vilification is a gross misrepresentation of his true  
21 nature." Do you agree with that?

22 A. Absolutely.

23 Q. All right. Matt wasn't the only member of  
24 the team suspended in that spring and summer -- I'm  
25 sorry. Ryan wasn't the only member of the team?

1           A.    Correct.

2           Q.    Who else was?

3           A.    That -- that spring?

4           Q.    That spring and summer.

5           A.    Well, Matt Wilson was suspended.  It was

6   the following spring, wasn't it?

7           Q.    It was the summer of 2006?

8           A.    2007, wasn't it?

9           Q.    Huh-uh.  Do you remember?

10          A.    What I remember is that he had his -- I've

11   forgotten the details, whatever the details were of

12   that incident in Chapel Hill right before the special

13   prosecutors announced the innocence of the three.  So

14   that would have been 2007.

15          Q.    Yeah.  Okay.  Well, we'll -- the record

16   will show when it was.

17          A.    Okay.

18          Q.    Were you familiar with the process that

19   led to his suspension?

20          A.    Yes.

21          Q.    Okay.  And who ran that process for

22   Duke University?

23          A.    Stephen Bryan.

24          Q.    Okay.  And the alleged incident giving

25   rise to Matt's suspension, where did that occur, do

1 you recall?

2 A. I believe it was Chapel Hill.

3 Q. Okay. Was school in session?

4 A. No.

5 Q. Was Matt enrolled in school?

6 A. No.

7 Q. Do you -- do you know if Matt was even

8 able to access Duke University's CAPS program when

9 this occurred? Do you know?

10 A. I don't know how that governs students who

11 aren't currently -- he was enrolled, obviously, but

12 he wasn't in school.

13 Q. Okay.

14 A. He wasn't in summer school.

15 Q. Okay. So it occurred off campus, out of

16 county?

17 A. Yes.

18 Q. All right. And ultimately, he was

19 suspended?

20 A. Yes.

21 Q. Okay. For -- and what -- was that

22 suspension appealed, do you recall?

23 A. Yes.

24 Q. And what happened on the appeal?

25 A. I believe it was reduced -- the original

1 suspension was for summer and -- summer and fall  
2 semester. I believe that the fall semester  
3 suspension was suspended.

4 Q. Okay. All right. So it was -- the  
5 appeals panel modified or sort of reversed part of  
6 the suspension?

7 A. Yes.

8 Q. All right.

9 A. It sort of rendered the punishment moot in  
10 that he wasn't enrolled that summer anyway.

11 Q. Okay. Part of his appeal was based on the  
12 assertion Matt made that, in the course of  
13 adjudicating his case, the Office of Judicial Affairs  
14 administrators repeatedly invoked unwritten and  
15 unclear policies to support decisions that were  
16 contradictory, arbitrary and a violation of his  
17 rights. Do you recall anything like that going on?

18 MR. ELLIS: Object.

19 THE WITNESS: I remember being concerned  
20 at the time that if the policy was going to be that  
21 Duke students were subject to judicial action for  
22 whatever they did anywhere, that there was a  
23 substantial possibility of real unfairness, depending  
24 on their proximity to campus. And that students who  
25 lived in Portland, or I have a student in my class



1 right now from China, were much less likely to, you  
2 know, fall under the harrow of that policy.

3 BY MR. EKSTRAND:

4 Q. How did Matt fall under the harrow of that  
5 policy?

6 A. He was right here.

7 Q. And he was a lacrosse player?

8 A. I can't say whether that played a part or  
9 not, but --

10 Q. Well, how did you first hear about it?

11 A. Might have been a news report. I don't  
12 remember.

13 Q. Do you recall Burness calling you about  
14 it, John Burness?

15 A. I don't.

16 Q. All right. Now, did you ever have a  
17 conversation -- let me scratch that. In your view --  
18 well, what was your view, first of all? Did you play  
19 a role in his process?

20 A. Yes.

21 MR. ELLIS: Object. Object.

22 BY MR. EKSTRAND:

23 Q. What was that?

24 MR. ELLIS: Object.

25 THE WITNESS: I advised him -- well, back

1 it up. Even before the judicial process, I mean, his  
2 father -- I talked to his father at great length  
3 about, leave lacrosse out of it, leave Duke out of  
4 it, leave disciplinary measures out of. What do we  
5 need to do for Matthew who was allegedly found in a  
6 car passed out with some prohibited substance in the  
7 glove compartment. And the concern was that he had  
8 some sort of substance abuse problem. And so the  
9 first thing to do was to address that. And because  
10 if you don't address that, all the other stuff  
11 doesn't matter.

12           And I wasn't directly involved in finding  
13 the particular people to help him that I remember.  
14 As I remember, he had a therapist in Chapel Hill.  
15 But then going beyond that, then when that process  
16 began, then I helped them sort of think through how  
17 you're going to deal with judicial affairs and what's  
18 the thing to do going forward.

19 BY MR. EKSTRAND:

20           Q. Okay. Were you aware that Matt was one of  
21 four members of the team that Crystal Mangum had said  
22 they remembered and looked like one of the attackers?

23           A. Yes.

24           Q. Were you aware that he was the one of the  
25 four she quote/unquote recognized as such that was

1 not charged at the time?

2 A. Yes.

3 Q. Okay. Are you aware of any concerns that  
4 Matt or his family had that that would change, that  
5 he would be charged?

6 A. Yes.

7 Q. Okay. Did you share those concerns?

8 A. At the time, I thought that they had  
9 settled on version whatever it was, which involved  
10 three attackers, that they had gone too far down that  
11 road to turn around and go back to a fourth.

12 Q. So you're basing that on a rational,  
13 logical --

14 A. True.

15 Q. -- theory?

16 A. Correct.

17 Q. Right? So, in your view, is that a  
18 reliable basis to make judgments about what this DA  
19 and this --

20 MR. ELLIS: Objection.

21 THE WITNESS: Rationality was not a good  
22 basis for judgment of a lot of people's actions at  
23 the time. But I can tell you this, if it had been my  
24 son who was the fourth one identified, I would have  
25 been scared to death.

1 BY MR. EKSTRAND:

2 Q. All right. Did you have an occasion to  
3 talk to Stephen Bryan about the hearing that he was  
4 putting together for Matt?

5 A. I may have, but I don't recall.

6 Q. Okay. Well, what -- did you feel like --  
7 was there -- did you have a sense that Matt was going  
8 to receive a fair hearing?

9 MR. ELLIS: Objection.

10 THE WITNESS: I would -- my concern was  
11 this, that Matt had two professional therapists who  
12 had spent a lot of time with him, whose judgment,  
13 based on their professional expertise, was that Matt  
14 needed to be in school. And that he was going to  
15 be -- and that this matter was going to be decided  
16 about a judicial board made up of a math professor  
17 and two students. And that they had the -- they had  
18 the power to overturn that professional judgment of  
19 those therapists, which they did.

20 BY MR. EKSTRAND:

21 Q. What did you understand the rationale for  
22 that, that recommendation of the professionals that  
23 Matt should not be removed from school, that he  
24 should remain a part of the community?

25 MR. ELLIS: Objection.

1 THE WITNESS: I tried not to -- I tried to  
2 help without -- prying is not the right word --  
3 without myself having to learn about any of the  
4 details of what was going on in his therapy. So I  
5 don't --

6 BY MR. EKSTRAND:

7 Q. Right. So you just knew that take-away?

8 A. Yeah.

9 Q. All right. Now, did you talk about the  
10 panel members, the composition of the panel with  
11 Stephen Bryan at any point or the fairness of the  
12 procedure?

13 A. I may have expressed those concerns to  
14 him, yeah. I don't remember --

15 Q. Do you recall anything?

16 A. I don't remember exactly.

17 Q. Okay. Do you recall anything that he said  
18 about that, the panel, its membership?

19 A. No.

20 Q. Okay. Do you recall Stephen Bryan ever  
21 telling you that or reporting that anytime a student  
22 is charged with DWI, that there's a -- or is found  
23 responsible for driving while impaired, they're  
24 automatically suspended, essentially, as a matter of  
25 course?

1           A.    I think I recall him saying that that was  
2    sort of the precedented punishment.

3           Q.    All right.  Are you aware of any  
4    deviations from that precedented punishment?

5           MR. ELLIS:  Objection.

6           THE WITNESS:  I'm not, but that wouldn't  
7    surprise me.

8    BY MR. EKSTRAND:

9           Q.    Do you know Michael Sean Brown?

10          A.    No.

11          Q.    Okay.  Are you aware of an allegation that  
12    a Duke student was driving while impaired, and then  
13    when confronted, wielded a knife and threatened  
14    somebody with it?  Remember that story?

15          A.    There was the wrestler.

16          Q.    Well, don't guess, don't guess.  If you're  
17    aware, you're aware, or not.

18          A.    I can't remember his name, but there was  
19    an incident where a wrestler was stopped and at least  
20    had a large knife in the car, and there was some kind  
21    of impairment.

22          Q.    Okay.  Are you aware of whether or not he  
23    was suspended?

24          A.    I don't believe he was.

25          Q.    Okay.  Would it surprise you that he was

1 not and instead was just held out for one game?

2 A. My experience of the judicial board over  
3 30 years would lead me not to be surprised at any  
4 decision they make.

5 Q. Why is that?

6 A. I was -- appeared as a character witness  
7 for one student years ago who was accused of  
8 plagiarism, and he went in and said, I did it. I'm  
9 sorry. I apologize. I've learned my lesson, and  
10 I'll never do it again, and they found him not  
11 guilty.

12 MR. EKSTRAND: Okay. Let's take a break.  
13 We're at 4:00 o'clock, and I may be pretty close to  
14 being done, and you've been patient. We'll go off  
15 the record and wrap up when we come back.

16 (A recess transpired from 4:06 p.m. until  
17 4:13 p.m.)

18 (Kennedy 22 was marked for identification.)

19 BY MR. EKSTRAND:

20 Q. All right. Are we back on? I want to  
21 cover a couple more things, and then we'll --  
22 Exhibit 22, and it's a letter dated February 22nd,  
23 2010. It appears to be from you. But I want to make  
24 sure that's true.

25 A. Yes, it is.



1 Q. Okay. It's a letter to Columbia  
2 University Law School?

3 A. Yes.

4 Q. And did you write this?

5 A. Yes, I did.

6 Q. All right. Did you write it on behalf of  
7 Matt Wilson?

8 A. Yes.

9 Q. All right. You say, "I can assure you  
10 that Mr. Wilson is a young man of great character who  
11 bore himself admirably in an extremely harrowing and  
12 even violent time." Did you mean what you wrote?

13 A. Yes.

14 Q. Do you still believe that to be true?

15 A. Yes.

16 Q. What do you think of Matt Wilson?

17 A. Hard for me to be objective about Matt  
18 Wilson. I've known him since he was a little kid.  
19 He's a friend of my son. He's a teammate of my  
20 son's, both in high school and college. I'm friends  
21 with his parents. His sister was a teammate and a  
22 friend of my daughter. But I don't write letters of  
23 recommendation that I don't mean.

24 Q. Okay. Now, you had -- how long have you  
25 been at the university in all? You started as a

1 Ph.D. candidate?

2 A. 1973.

3 Q. And it's now 2000 and almost 12?

4 A. Yes.

5 Q. Does that make it 39 years?

6 A. I was very young when I came.

7 Q. You're still a very young-looking man. We  
8 should all be so lucky. Almost --

9 A. Forty years.

10 Q. My God. Forty years. And at this time  
11 that these events are happening, it was 35 years,  
12 give or take?

13 A. Yes.

14 Q. And you had oversight over the lacrosse  
15 program?

16 A. Yes.

17 Q. And you had great knowledge about the  
18 lacrosse program?

19 A. Yes.

20 Q. And you had extensive knowledge about the  
21 members of the lacrosse team?

22 A. Yes. Depending on how long they had been  
23 there, but yes.

24 Q. You had a clear and long history of  
25 understanding and knowledge about the coach of the

1 lacrosse team?

2 A. Yes.

3 Q. And you testified here that after  
4 March 24th or so, nobody consulted or even advised  
5 you of what was happening with respect to decisions  
6 made about the team?

7 MR. ELLIS: Objection.

8 THE WITNESS: The only person with whom I  
9 really talked about it was Joe Alleva.

10 BY MR. EKSTRAND:

11 Q. Okay. So if they're not -- by "they," I  
12 mean the decision makers, if they're not including  
13 you in the discussion, who's in the discussion?

14 MR. ELLIS: Objection.

15 THE WITNESS: I wasn't there. I don't  
16 know.

17 BY MR. EKSTRAND:

18 Q. Okay. Who do you understand to be  
19 involved in making the decisions about the men's  
20 lacrosse team, their program, their season, their  
21 cancellations?

22 A. My impression from talking to Joe about it  
23 was that he was there, of course, and Tallman Trask,  
24 Peter Lange, Moneta, John Burness. I assume Richard  
25 Riddell.

1 Q. All right. And John --

2 A. And I mean, the board of trustees later  
3 came out and said -- or Bob Steel on behalf of the  
4 board of trustees later came out and said, he did --  
5 everything he did, he did with our full knowledge and  
6 support.

7 Q. And by "he," he was referring to?

8 A. President Brodhead.

9 Q. All right. How did that make you feel?  
10 How did you react to that as you watched it unfold,  
11 the decisions being made without your input?

12 MR. ELLIS: Objection.

13 THE WITNESS: Well, I don't -- I don't  
14 have the -- such a high opinion of my input that that  
15 really was the thing that bothered me.

16 BY MR. EKSTRAND:

17 Q. What did?

18 A. A lot of things bothered me, but, you  
19 know, the fact is, when Pressler and I walked back  
20 over to his office between when Alleva had told him  
21 either it was going to be -- had to resign or be  
22 suspended, and then he went off to do some things,  
23 and that's when the Ryan thing came out, we sat in  
24 his office, and he talked me out of resigning.

25 Q. He talked you out of resigning?

1 A. He talked me out of resigning.

2 Q. Why would you resign?

3 A. Because it would have been a mistake. It  
4 would have been a reaction as impetuous as forcing  
5 him to resign. But I've been at this university at  
6 the time period, as you said, 35 years, virtually, my  
7 entire professional career. The academic support  
8 programs and the compliance programs and some other  
9 things were built virtually from the ground up on my  
10 watch. And they're very successful programs. I  
11 believe completely in what the university stands for  
12 and in its goals and missions.

13 My life is intertwined with the place. I  
14 met my wife here. We were married in York Chapel.  
15 My children were born in Duke Hospital. They're both  
16 Duke graduates, and I felt that this place that I had  
17 given so much to and stood for so much that I  
18 believed in was abandoning those beliefs in the way  
19 it was acting. And that was not intolerable, but it  
20 was close to it.

21 Q. And so you entertained the idea that  
22 you -- you should resign?

23 A. Yes. It was not a good idea and Pressler  
24 was right.

25 Q. Why did you -- why did you come to, at

1 least that notion that that, that was an answer or a  
2 plausible answer to what was happening?

3 A. Because part of me thought that by not  
4 resigning, I was approving of what was going on.

5 Q. And what did you think about what was  
6 going on?

7 A. I thought that -- that the university was  
8 not supporting its students as well as it could have.  
9 I mean, you know, I had sympathy for the -- the level  
10 of chaos in trying to keep -- make decisions in that  
11 chaos. And at times, it was like trying to steer the  
12 wave that you're surfing on.

13 But I still felt that -- that not in a  
14 coordinated way, but that so many segments of the  
15 university had abandoned those kids and abandoned  
16 them when they needed support the most, and they  
17 didn't get much support from any quarters.

18 Q. Right. All right. Now, you said --  
19 you've named and identified people that you believed  
20 to be involved in the decisions that led to that  
21 circumstances, John Burness, Larry Moneta, and the  
22 others. When this whole episode concluded in the  
23 next spring with the Attorney General declaring that  
24 no crime occurred and no, you know, no evidence  
25 existed to prove that it did, do you remember that?



1           A.    Yes.

2           Q.    Okay.  Do you remember receiving any  
3 communication from anyone in that group you've  
4 mentioned or anybody suggesting or inviting you or  
5 anybody else to a meeting to confer about how to get  
6 the stories straight amongst the administrators?

7           MR. ELLIS:  Object to form.

8           THE WITNESS:  I don't remember when it  
9 was.  I know that Larry Moneta sent out an email  
10 calling a meeting to discuss -- I don't remember the  
11 exact phrasing.

12          BY MR. EKSTRAND:

13          Q.    What was the gist of the discussion he  
14 proposed?

15          A.    I think the gist of the discussion was,  
16 let's get together and make sure that we're all on  
17 the same page.

18          Q.    Okay.  And did you understand that, that  
19 email to mean to harmonize the story that they would  
20 articulate to the press or others about what had  
21 occurred and their position throughout it?

22          MR. ELLIS:  Objection.

23          THE WITNESS:  That was my understanding.

24          BY MR. EKSTRAND:

25          Q.    Okay.  Did you go to that meeting?



1           A.    Yes.

2           Q.    And what occurred at the meeting?

3           A.    I don't remember it very well at all for  
4 some reason.

5           Q.    It was a long time ago?

6           A.    Yeah.

7           Q.    All right. Do you have a recollection  
8 sufficient enough to say whether or not it was  
9 consistent with that impression that you've just  
10 articulated?

11                   MR. ELLIS: Objection.

12                   THE WITNESS: That's my impression. I  
13 wouldn't say it's any stronger than that.

14 BY MR. EKSTRAND:

15           Q.    Okay. Who else was at that meeting?

16           A.    I don't remember.

17           Q.    Okay. Moneta?

18           A.    I'm sure Moneta. Well, Moneta, yes, and  
19 I'm sure Burness was there. In fact, I think it was  
20 in Burness' office.

21           Q.    Okay. Do you recall whether -- whether  
22 those two were the ones leading the meeting in its  
23 discussion pretty much?

24                   MR. ELLIS: Objection.

25                   THE WITNESS: I think it was pretty much

1 Burness, but again, I couldn't swear to you.

2 BY MR. EKSTRAND:

3 Q. Okay. Do you recall if the kinds of  
4 people who were copied on that first email I showed  
5 you, the PR-type people in Burness' office, were  
6 there?

7 A. I don't.

8 MR. ELLIS: Objection.

9 BY MR. EKSTRAND:

10 Q. Okay. I'm going to hand you what we'll  
11 mark as 23.

12 (Kennedy 23 was marked for identification.)

13 BY MR. EKSTRAND:

14 Q. We're almost done. This is an email on  
15 the account of the Chief of Police Steven Chalmers,  
16 and it's an email from John Burness to Chief  
17 Chalmers, with a copy to Richard Brodhead. Take a  
18 second to review this email, but particularly, I  
19 would like for you to pay attention to the last  
20 paragraph before Burness says, "Cordially." And also  
21 to identify the attachments and see if you can sort  
22 out what they are.

23 A. Okay.

24 Q. Okay. So this email is dated May 1st,  
25 2006. And at the bottom, it says -- well, actually,

1 attached to the email are three documents. The first  
2 is labeled ACSAC Report. Do you know what that would  
3 be?

4 A. No.

5 Q. The second is a -- is labeled Lacrosse  
6 Review Report Final. Do you know what that would be?

7 A. Yes.

8 Q. What would that be?

9 A. That was the product of the deliberations  
10 or the investigation of the Coleman Committee.

11 Q. Okay. And the last is the -- it's called  
12 RHB Statement Re Committee Rep. Do you know what  
13 that would be?

14 A. I assume it's a Brodhead statement, but I  
15 don't know what committee report he's referring to.

16 Q. All right. At the bottom, it says, this  
17 is Burness writing to Steven Chalmers, "I attach  
18 copies of the reports and President Brodhead's  
19 statements with a request that you treat them with  
20 confidence until they are posted online, i.e.,  
21 released to the public." Right?

22 A. Uh-huh.

23 Q. So -- now, obviously, Burness is sending  
24 an advance copy of these reports to the Chief of  
25 Police about the lacrosse team. My question for you

1 is: Did you get an advance copy of these reports  
2 about the lacrosse team?

3 A. No.

4 (Kennedy 24 was marked for identification.)

5 BY MR. EKSTRAND:

6 Q. Now, let's mark this one as 24. What's  
7 been marked as an Exhibit 24 is an email from the  
8 account of Mark Gottlieb. That's Sergeant Mark  
9 Gottlieb. And it's -- appears to be copying an  
10 article from the Herald Sun on April 25th, 2006.

11 What I want to ask you about here is on  
12 the second page, and it's Bates numbered 22412, first  
13 full paragraph at the top. And it's a discussion  
14 about -- Burness being quoted in discussing the PR  
15 strategists and consultants they've hired.

16 And Burness says, "They give us a sense of  
17 whether we're asking the right questions and helping  
18 devise strategies," Burness said. "In the lacrosse  
19 case, the consultant's feedback has been 'highly  
20 reinforcing of our approach,' which he said has been  
21 characterized by cooperation with the news media."

22 What's your reaction to that?

23 MR. ELLIS: Objection.

24 THE WITNESS: My reaction is that when --  
25 when the university hired, I think it was, Wilmer

1 Hale to do a lessons learned review, and they  
2 interviewed me and asked what I would have advised in  
3 retrospect, my advice would have been to shut up,  
4 that every time something happened, it seemed as if  
5 they needed to make a statement. And I think they  
6 wished they hadn't made some of those statements now.  
7 So I don't -- I'm not -- I don't agree with the PR  
8 firm's evaluation of how they, at least the public  
9 affairs office handled the whole thing.

10 BY MR. EKSTRAND:

11 Q. Right. Okay. Last one is 25.

12 A. Thank you.

13 (Kennedy 25 was marked for identification.)

14 BY MR. EKSTRAND:

15 Q. This is a newspaper article entitled:  
16 Flacking up, Duke Lacrosse Case Becomes a PR Battle.  
17 And it discusses this consulting firm:  
18 Burson-Marsteller, a global public relations firm  
19 that has helped polish the reputations of some of  
20 America's largest corporations. And a source said,  
21 "They brought in a bunch of people who had been  
22 essentially training groups of 10 to 12  
23 administrators, faculty and students to talk to the  
24 media. They had been prepositioning these people to  
25 latch onto the TV crews coming through," one source

1 said.

2 Were you ever invited to participate in  
3 any of these PR tutorials?

4 A. No.

5 Q. Do you know who was?

6 A. No.

7 Q. Oh, one more thing. One last thing, and  
8 I'm sorry. Do you have any knowledge about the  
9 lacrosse team members' efforts to register voters in  
10 the spring of 2006?

11 A. Yes.

12 Q. Fall?

13 A. It was the fall.

14 Q. Fall. Sorry.

15 A. Yes.

16 Q. Tell us about what you know about that.

17 A. Well, I knew about it ahead of time. In  
18 fact, I saw Ed Douglas and Matt Danowski that morning  
19 because we had some -- I forget. It was a trustee  
20 thing or something that they spoke to. And they were  
21 talking about what they were going to do that day,  
22 registering voters. And I told them, good luck,  
23 whatever. And then I subsequently discovered that  
24 one of our assistant ADs took it upon themselves to  
25 tell them that the policy was that they weren't



1 allowed to do that in the stadium, that they couldn't  
2 follow through on that.

3 Q. Okay. By "that," what was he referring  
4 to?

5 A. I think -- I think he was referring to we  
6 don't allow -- we don't allow independent solicitors  
7 into the football stadium during a football game.

8 Q. Right. People selling stuff?

9 A. Right, right. And I think he was -- this  
10 is unilaterally. He did this without consulting  
11 anybody, as far as I know. He decided that that,  
12 analogously, that policy should apply to somebody  
13 trying to register voters.

14 Q. Okay. Do you agree with that  
15 interpretation of the solicitation policy?

16 A. Not exactly.

17 Q. All right. So what was the -- what was  
18 the end game of that? Were the students -- were the  
19 members of the team allowed to register voters?

20 A. No, not that I know of, no.

21 Q. Okay.

22 MR. ELLIS: I object to the form of the  
23 question.

24 BY MR. EKSTRAND:

25 Q. Okay. Are you aware of whether or not



1 they had registration forms in their possession,  
2 members of the team?

3 A. As far as I know, they did, yes.

4 Q. And they had arrived to --

5 A. Yes.

6 Q. -- go register people to vote?

7 A. Yes.

8 Q. And there were voting members of the  
9 public out in the common area of the stadium in and  
10 outside of the stadium, right?

11 A. Yes.

12 Q. And were the students allowed to register  
13 voters anywhere?

14 A. I believe they were told they couldn't  
15 even do it outside the stadium.

16 Q. Are you aware of any of the public  
17 statements that John Burness made subsequent to that  
18 event when it was publicized about the rationale for  
19 the prohibition on their registration?

20 A. No, I remember that we had a meeting about  
21 it.

22 Q. Who is "we"?

23 A. Burness, Saab, me, probably people from  
24 his office. I don't remember who all was there. I  
25 didn't really remember the upshot of it, except to --

1 I wanted them -- I want to make sure that they  
2 understood that this wasn't the Department of  
3 Athletics that had done this. It was one individual  
4 who took it upon himself to make that call.

5 Q. Okay. And just so I make sure the record  
6 has it, who was that again?

7 A. Mike Saab.

8 Q. Mike Saab. All right. Do you remember  
9 any discussion about the failure of the students, the  
10 team members to make a request to do this, and that  
11 that might be why they were not --

12 A. (Moving head from side to side.)

13 Q. Okay. You aware of them following the  
14 proper channels in their efforts to do that?

15 A. I probably wasn't aware of the channels,  
16 but I know that when I saw them that morning, I  
17 didn't have any concerns about them doing it.

18 Q. Okay. And to your knowledge, were they  
19 able to register voters that day?

20 A. I don't think they did.

21 Q. Do you know if they were detained or  
22 otherwise kept in the Murray Building?

23 A. Well, you know, if they didn't want to be  
24 detained, they couldn't have been detained, by Mike  
25 Saab, anyway. But I think he told them words to that

1 effect, you can't come out from the Murray Building  
2 into the concourse.

3 Q. Unless they drop the registration forms?

4 A. Right, right.

5 Q. You couldn't leave with those forms?

6 A. Right.

7 Q. All right. Do you recall anything about  
8 them having to turn their shirts inside out?

9 A. It was something about shirts. I don't  
10 remember the details. Struck me as really trivial.

11 Q. All right. But that administrator asked  
12 them to change their shirts and turn them inside out?

13 A. Something like that. I don't remember.

14 Q. Do you remember whether it was something  
15 their shirts said?

16 A. I don't remember.

17 Q. "Voice Your Choice"? Don't remember?

18 MR. ELLIS: Objection.

19 MR. EKSTRAND: Fair enough.

20 THE WITNESS: (No response.)

21 MR. EKSTRAND: Dr. Kennedy, you have been  
22 a saint. Thank you so much. I'll turn the table  
23 over. I know this may continue with Plaintiffs,  
24 but --

25 MR. ELLIS: Actually, we'll withhold any

1 cross-examination until the entire investigation --  
2 examination is finished.

3 MR. THOMPSON: I think that's the way to  
4 proceed. And just so the record's clear, this is  
5 David Thompson for the Carrington Plaintiffs.  
6 Dr. Kennedy, under the rules governing this, there is  
7 seven hours of questioning. We won't feel compelled  
8 to take all seven hours, necessarily.

9 THE WITNESS: Thank you.

10 MR. THOMPSON: But with your permission  
11 and Mr. Ellis' permission, we'd like to resume this  
12 in January at a mutually convenient time.

13 THE WITNESS: Okay.

14 MR. THOMPSON: Mr. Ellis, is that  
15 acceptable?

16 MR. ELLIS: That will do.

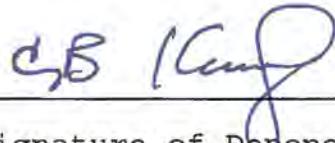
17 (The deposition was concluded at 4:36  
18 p.m.)

19  
20  
21  
22  
23  
24  
25

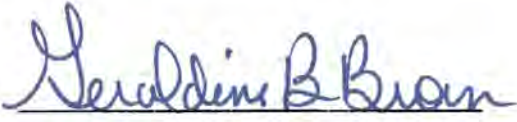
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

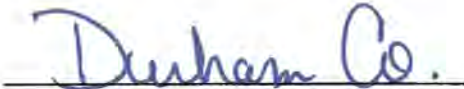
CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me. Any additions or corrections that I feel are necessary, I will attach on a separate sheet of paper to the original transcript.

  
Signature of Deponent

I hereby certify that the individual representing himself/herself to be the above-named individual, appeared before me this 09 day of DECEMBER, 2011, and executed the above certificate in my presence.

  
NOTARY PUBLIC IN AND FOR

  
County Name

MY COMMISSION EXPIRES: 10-21-2012

1 STATE OF NORTH CAROLINA

2 COUNTY OF MECKLENBURG

3

4 I, Karen K. Kidwell, RMR, CRR, in and for  
5 the State of North Carolina, do hereby certify that  
6 there came before me on Friday, December 2, 2011, the  
7 person hereinbefore named, who was by me duly sworn to  
8 testify to the truth and nothing but the truth of his  
9 knowledge concerning the matters in controversy in this  
10 cause; that the witness was thereupon examined under  
11 oath, the examination reduced to typewriting under my  
12 direction, and the deposition is a true record of the  
13 testimony given by the witness.

14 I further certify that I am neither attorney  
15 or counsel for, nor related to or employed by, any  
16 attorney or counsel employed by the parties hereto or  
17 financially interested in the action.

18 This the 5th day of December, 2011.

19

20

21



22

Karen K. Kidwell, RMR, CRR  
Notary Public #19971050142

23

24

25