

Smith, Gary - Vol. 1 (2)

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RYAN MCFADYEN, et al.,
Plaintiffs,
vs. 1:07-CV-00953
DUKE UNIVERSITY, et al.,
Defendants.

DEPOSITION
OF
GARY NEAL SMITH

At Durham, North Carolina
December 30, 2011 - 9:37 a.m.
Reported by:
Cathleen M. Clack

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1 I, Cathleen M. Clack, being a court reporter and a
2 Notary Public in and for the state of North Carolina, was
3 appointed commissioner by consent to record the
4 deposition of GARY NEAL SMITH on the 30th day of December
5 2011, beginning at 9:37 a.m., at the offices of
6 Ekstrand & Ekstrand, LLP, located at 811 Ninth Street,
7 Suite 260, Durham, North Carolina.

8 _____

9 whereupon,

10 GARY NEAL SMITH,
11 having first been duly sworn, was examined and testified
12 as follows:

13 DIRECT EXAMINATION

14 BY MR. THOMPSON:

15 Q: Good morning. Please state your name for the
16 record.

17 Smith, Gary - Vol. 1 (2)
17 A: Gary Neal Smith.

18 Q: Good morning, sir. I'm David Thompson from
19 the firm of Cooper & Kirk representing the plaintiffs in
20 the Carrington matter. I'd like to ask counsel to
21 introduce themselves for the record.

22 MS. SPARKS: I'm Stefanie Sparks from
23 Ekstrand & Ekstrand on behalf of the plaintiffs in the
24 McFadyen case.

25 MR. EKSTRAND: Bob Ekstrand on behalf of

□

8

1 the plaintiffs in the McFadyen case.

2 MR. SHUIRMAN: Ryan Shuirman from Yates,
3 McLamb & Weyher representing Duke University Health
4 System and Tara Levicy.

5 MR. KING: Bob King from the Brooks
6 Pierce firm representing DNA Security and Richard Clark.

7 MR. WEISS: Jamie Weiss from the Ellis &
8 Winters firm representing the Duke defendants and
9 Mr. Smith.

10 MR. SUN: Paul Sun also from Ellis &
11 Winters representing the Duke defendants and here
12 representing Mr. Smith today.

13 BY MR. THOMPSON:

14 Q: And, Mr. Smith, have you been deposed before?

15 A: Yes.

16 Q: Okay. Well, you probably know the rules of
17 the road, but we have a court reporter here, so let's try
18 to talk one at a time. If I interrupt you at any point
19 today, please let me know. That's not my intention.

Smith, Gary - Vol. 1 (2)
20 we can take a break at any time for any
21 reason that you want to. If there's a question pending,
22 I'd ask that you go ahead and answer that question.

23 MR. THOMPSON: Mr. Sun, I just want to
24 confirm the conversation we had off the record. My
25 reading of the local rules is that there's a potential

□

9

1 ambiguity about whether we're allowed to speak to
2 witnesses during the breaks, midmorning break, lunch.

3 we have no objection to you speaking
4 with Mr. Smith during breaks about his testimony today.

5 MR. SUN: Thank you.

6 BY MR. THOMPSON:

7 Q: Okay. So have any of your other depositions
8 that you've testified in related to the allegations that
9 Ms. Mangum made in the aftermath of that?

10 A: No.

11 Q: Okay. And did you talk to anyone from the
12 North Carolina Attorney General's office about
13 Ms. Mangum's allegations?

14 A: No.

15 Q: And if you could just let me know what your
16 educational background is. You know, when did you
17 graduate from high school?

18 A: 1980, graduated.

19 Q: Okay. And did you go on to college?

20 A: Eventually.

21 Q: Okay. And did you get a different degree?

22 A: Yes.

23 Q: From what college?

24 A: Duke.

25 Q: In what year?

□

10

1 A: It shouldn't be that hard, but I think it was
2 '94.

3 Q: what did you major in?

4 A: History.

5 Q: Okay. And when did you start working at the
6 Duke Police Department?

7 A: 1983.

8 Q: Okay. And what had you done between 1980 and
9 1983?

10 A: Actually attended Durham Tech and worked for
11 Durham Regional Hospital.

12 Q: And when you were hired by Duke in 1983, what
13 was your title?

14 A: Patrol officer.

15 Q: Okay. And what were your responsibilities as
16 a patrol officer?

17 A: General patrol. Property checks. Answer
18 calls for service. Initial investigation of criminal
19 incidents.

20 Q: And what do you mean by "initial
21 investigation of criminal incidents"?

22 A: Somebody calls with a complaint, I would
23 respond and address the complaint.

24 Q: Okay. And if there was an allegation of a
25 crime taking place on the Duke campus, would the Duke

□

11

1 police investigate that crime?

2 A: Yes.

3 Q: And how would you split the responsibility,
4 if at all, with the Durham police in that investigation?

5 A: In 1983, if an event happened on Duke
6 property, Campus Main or -- if it happened on Duke
7 property, Duke took care of it; if it happened off of
8 Duke property, the agency -- other agency responsible
9 would take care of it.

10 Q: All right. And what if it were a house like
11 610 North Buchanan which was owned by Duke but which was
12 right across from the campus?

13 A: It would depend on -- my understanding is it
14 depends on -- it depends on a few factors. Even if Duke
15 owns it, if they don't -- sorry. If they don't exercise
16 direct control of it, say, if it's a residential property
17 that's handled through a property manager, we wouldn't
18 exercise jurisdiction there. Properties like
19 nonresidential properties where Duke may have offices or
20 clinics, we will sometimes exercise primary or direct
21 jurisdiction there.

22 Q: Okay. Now, were you just describing the
23 state of play in 1983?

24 A: And for the most part, that hasn't changed.

25 Q: Okay. well, let's just -- to be crystal

□

12

1 clear for the record, so 2006, March of 2006, Duke -- is
2 it your understanding that Duke owned the 610 North
3 Buchanan property?

4 A: In March of 2006, I was unaware that Duke
5 owned the property on Buchanan.

6 Q: Okay. Are you aware of that today?

7 A: Yes.

8 Q: Okay. And when did you become aware of that?

9 A: Shortly after March 13.

10 Q: okay. of 2006?

11 A: Yes.

12 Q: Okay. And did the Duke police participate in
13 the investigation of the crime scene at 610 North
14 Buchanan?

15 A: We had an officer -- I believe we had officer
16 respond to the scene, but, no, I don't think he
17 participated in the investigation.

18 Q: Do you know which officer that was?

19 A: I'm thinking it was Chris Day.

20 Q: And what was your understanding -- what is
21 your understanding of what the policy was that Duke had
22 in March of 2006 in terms of undertaking an investigation
23 on a property it owned right next to its own campus?
24 would the Duke police, as a general matter, participate
25 in an investigation?

□

1 A: Not always.

2 Q: Okay. What were the factors that would
3 determine whether Duke police would investigate the crime

4 or would not?

5 A: Honestly, I don't know. I couldn't give
6 you -- it's not that it -- I can't say that I've ever had
7 under this circumstance, this circumstance, this
8 circumstance and this circumstance you will, and under
9 this, this, this, and this you won't generally.

10 On campus property, we handle everything;
11 properties off-campus, it could change from instance to
12 instance. And that's my recollection. I can give you
13 examples.

14 Q: well, let's do that, yes.

15 A: There was a shooting, a domestic shooting
16 on -- at a Duke clinic on North Duke Street. That's our
17 property. It happened in the parking lot, it happened in
18 the building, but Durham handled it.

19 Q: Durham handled it.

20 A: Durham handled it.

21 Q: Now, when you say a domestic shooting, what
22 do you mean? A husband and wife?

23 A: A husband shot his wife in the parking lot.

24 Q: Okay. Do you remember approximately when
25 that was?

□

14

1 A: It was after 2006.

2 Q: Okay, good, all right. Give me other
3 examples you can think of.

4 A: Offhand, that's the one that comes to mind.

5 Q: Okay. And did you have any involvement or
6 hear in any way as to why Duke wasn't investigating that?

7 A: No.

8 Q: Do you know whose decision it would be as to
9 whether the Duke Police Department would investigate a
10 crime that occurred on Duke property off-campus?

11 A: Well, in the end, the decision is going to be
12 the chief.

13 Q: Do you know if there's any other officers
14 involved in the decision?

15 A: Well, if there's a question about who's
16 going -- what the jurisdiction is, it's generally going
17 to be referred to the staff duty officer.

18 Q: And this may be as good a time as any, and I
19 apologize for my ignorance, but please explain to me in
20 March of 2006, what was the hierarchy within the Duke
21 Police Department. You had a chief who was in charge of
22 the department?

23 A: We had -- actually, we had an associate vice
24 president who was in charge of the department.

25 Q: And who was that in March of 2006?

□

15

1 A: Aaron Graves.

2 Q: All right. And then who reported to him?

3 A: Robert Dean reported to him. He was the
4 chief.

5 Q: Right. And then what was hierarchy like
6 under Mr. Dean?

7 A: Leila Humphries was the assistant chief.

8 Q: All right. And please keep going.

9 A: There were four majors underneath -- there

10 were four majors underneath Humphries. Let me see.
11 James Schwab. Sarah Minnis. Bernie Parker. And
12 Phyllis -- actually, I don't remember if Phyllis Cooper
13 was a major in that time or if she was promoted later.

14 Q: All right. And underneath the majors, what
15 was the rank?

16 A: There were -- things were in transition
17 around then, so there may have been an executive officer
18 or captain, and that would have been Sara-Jane Raines.

19 Q: Okay.

20 A: And then a lieutenant for each squad.

21 Q: When you say -- so would there be four
22 lieutenants --

23 A: Yes.

24 Q: -- one reporting to each major?

25 A: No.

□

16

1 Q: Oh, I'm sorry.

2 A: No. Each major had their own areas of
3 responsibility.

4 Q: Okay. So do the squads report up to
5 Ms. Humphries or do they report through a lieutenant?

6 A: They would report through -- the
7 lieutenant -- each lieutenant runs a squad. The
8 lieutenant, if there's any -- the lieutenant would make
9 notifications to Jim Schwab, who was the major in charge
10 of operations, and then he would make notifications as
11 needed. I don't know. And if that notification went
12 through Humphries or if it went directly to the chief.

13 Q: Okay. And how many lieutenants were there
14 reporting to Schwab in March of 2006?

15 A: I think we had more than four lieutenants but
16 only four patrol lieutenants. And I think that was --
17 that they -- only the four patrol lieutenants reported to
18 Schwab.

19 Q: All right. And who were they, if you recall?

20 A: 2006 -- I don't recall. I don't recall all
21 of them.

22 Q: Which ones do you recall?

23 A: Jeff Best was a lieutenant. Actually, I
24 think Davis Trimmer was a lieutenant at that time. Tom
25 Gustafson. And I don't recall the fourth.

□

17

1 Q: Okay. Was Mr. Best, Lieutenant Best, was he
2 the officer whose patrol had jurisdiction over 610 North
3 Buchanan?

4 A: What day? At what time?

5 Q: March 13th?

6 A: His squad was working that.

7 Q: Okay.

8 A: I believe his squad was working that night.

9 Q: And how many officers are in each squad?

10 A: It's varied, and I couldn't tell you exactly
11 how many were assigned to a squad in 2006. Maybe ten
12 police officers, at least that many security officers.

13 Q: And what's the distinction you're drawing
14 between a security officer and a police officer?

15 A: A police officer has arrest files; security

16 officers -- doesn't.

17 Q: And approximately of the ten police and
18 security officers, how many are police?

19 A: I said ten police officers and ten security
20 officers.

21 Q: Oh, thank you, okay. And so are there
22 approximately -- well, what is the rank of these officers
23 who are reporting up to the patrol lieutenants?

24 A: Be the lieutenant, a sergeant, and the
25 rest -- the rest would be patrol officers.

□

18

1 Q: And do the patrol officers report to the
2 sergeant in some way?

3 A: Chain of command is patrol officer to
4 sergeant to lieutenant, but it's not that formal.

5 Q: Okay. So a patrol officer could contact, in
6 this instance, Lieutenant Best directly?

7 A: Yes.

8 Q: Okay. And so let's go back in time, 1983,
9 you're hired as a patrol officer. How long did you have
10 that title?

11 A: Seventeen years.

12 Q: Okay. And then you became a sergeant. Is
13 that right?

14 A: Yes.

15 Q: In about 2000?

16 A: 2001.

17 Q: And how did your responsibilities change?

18 A: I moved from uniform patrol to

19 investigations.

20 Q: And what did that mean on a day-to-day basis
21 for you?

22 A: It meant that I moved from shift work to,
23 more or less, Monday through Friday, daytime.

24 Q: And are there always active investigations
25 ongoing?

□

19

1 A: Oh, yes.

2 Q: Okay. All right. And your title was
3 sergeant, then, in 2001. Is that right?

4 A: First Sergeant, yes.

5 Q: First Sergeant. And is that still your title
6 today?

7 A: Yes.

8 Q: Okay. And are you still in the
9 investigations section?

10 A: No.

11 Q: Okay. When did that change?

12 A: Around 2008.

13 Q: And was your status changed because of the
14 fallout from the lacrosse case?

15 A: No.

16 Q: Okay. What was the change in your status?
17 You went from investigations --

18 A: I went from investigations back to uniform
19 patrol.

20 Q: Why did this change occur?

21 A: I had been in investigations for seven years,
Page 17

22 and my management decided they wanted me on uniform
23 patrol.

24 Q: Did they tell you why?

25 A: No.

□

20

1 Q: All right. Now, have you ever worked with
2 the Mark Gottlieb before the lacrosse case?

3 A: In what -- not to my -- I don't recall.

4 Q: Okay. Were you aware that some people
5 thought that Mr. Gottlieb was biased against Duke
6 students?

7 A: I had heard -- I heard rumors.

8 Q: Okay. In the Duke Police Department about
9 that?

10 A: I don't recall if I had heard them from other
11 officers or -- I don't recall who I had heard them from.

12 Q: Okay. Now, when did you learn about the
13 allegations that a sexual assault or a rape had occurred
14 at 610 North Buchanan?

15 A: I think the first time I heard about them was
16 when I saw Chris Day's report.

17 Q: And what did his report say?

18 A: I don't recall the exact contents of the
19 report, but what I do recall is that he had responded to
20 that location. A sexual assault had been reported.
21 Durham had responded to it, and he responded and stood
22 by.

23 Essentially, his report was that he went
24 there, he stood by while they did what they did, and he

25 documented it.

□

21

1 Q: All right. And he concluded that the
2 allegations were not credible. Is that right?

3 A: I don't recall if that was in the report or
4 not.

5 Q: Okay. Was that the sense within the Duke
6 Police Department when Officer Day's report circulated,
7 that these allegations weren't credible?

8 A: I really couldn't comment on what anybody
9 else thought about it.

10 Q: All right. Well, what did you think about it
11 when you read these allegations? Do you think they were
12 credible?

13 A: Based on Chris Day's report alone?

14 Q: Yes.

15 A: I don't have an opinion one way or the other.

16 Q: Okay. Did you learn that the people who
17 lived in that house went down and voluntarily provided
18 their DNA to the Durham police and voluntarily gave
19 statements and allowed themselves to be interrogated
20 without counsel all night long on March 15th? Were you
21 aware of that?

22 A: I don't think I was aware of that on March
23 15.

24 Q: Okay. If you had been aware of that, would
25 that have suggested to you they were innocent?

□

1 A: Not necessarily.

2 Q: Not necessarily. Okay. It is more
3 suggestive of innocence than guilt, though, wouldn't you
4 agree, if they give their DNA and go in and submit to a
5 midnight interrogation without a lawyer?

6 A: It's -- in my experience, as an investigator,
7 people do lots of things. Sometimes it's not the
8 rational thing and it's not the smart thing.

9 Q: Were you aware that they asked to take a
10 polygraph test?

11 A: I was not aware of that.

12 Q: Have you ever had somebody who is in fact
13 guilty beg you to take their polygraph test?

14 A: I've had people who were guilty agree to take
15 a polygraph test.

16 Q: But have they ever asked you, "Please take my
17 polygraph," and it's their idea?

18 A: Nobody's ever asked me.

19 Q: Okay. Were you aware that these boys asked
20 the Durham police, "Please take our polygraph"?

21 A: If anybody ever mentioned it to me, I forgot
22 it.

23 Q: Okay. Is that suggestive to you of people
24 who are innocent?

25 A: I'm not -- I wasn't there. I wasn't part of

□

1 their interviews. I wasn't -- I don't know what their

2 demeanor was, what their body language was when they were
3 doing this. All I know is how you characterize it. So
4 based on that alone, I'm not prepared to commit to say
5 one way or another what it suggests about it. I wasn't
6 there.

7 Q: Right. Now, were you aware that Officer Day
8 changed his initial report?

9 A: If I heard that, I didn't remember it.

10 Q: He's no longer with the Duke Police
11 Department?

12 A: No, he's not.

13 Q: And why did he leave?

14 A: He -- he wanted -- through my conversations
15 with Chris, it's just because of our schedule, and -- I
16 think it's probably more because of our schedule that he
17 chose to take employment with the Capital Police in
18 Raleigh --

19 Q: And is he --

20 A: -- and have a better schedule.

21 No, he's not with them anymore.

22 Q: Where is he now?

23 A: He's with the Raleigh-Durham Airport Police.

24 Q: Okay. Now -- so you said the first time you
25 learned of these allegations was when you read Officer

□

24

1 Day's report. When was that, do you recall?

2 A: It would have been in the morning -- well,
3 excuse me. It should have been the morning after he
4 wrote the report.

5 Q: Okay. So March 15th, 16th, somewhere in that
6 area?

7 A: It depends. It depends on a lot of things.
8 I don't remember what the 13th was. If it was on a
9 weekend, then I would have seen it maybe Sunday. If it
10 were during the week, I would have seen it the next
11 morning.

12 Q: And do you recall that this was a topic of
13 conversation at the department?

14 A: I don't recall.

15 Q: It was big, though, wasn't it? I mean, it's
16 a rape allegation at a Duke-owned house.

17 A: If there was conversation about it, I don't
18 recall it.

19 Q: Okay. Do you recall any meetings about this
20 allegation?

21 A: No.

22 Q: Do you recall having any conversations with
23 anyone in the Duke Police Department about this case?

24 A: At that time, beyond maybe -- I don't recall
25 any conversations.

□

25

1 Q: Do you recall that there were conversations
2 even if you don't remember what they were?

3 A: If I had conversations, it might have been
4 with my fellow investigators just in passing, "Oh, look
5 what happened."

6 Q: Okay.

7 A: Beyond that, no.

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8 Q: Okay. Now, what was -- as a general matter,
9 leave aside the rape hoax, I'm going to call it, what was
10 the Duke Police Department's attitude towards cooperating
11 with the Durham police?

12 MR. SUN: Generally, or in this case?

13 MR. THOMPSON: Well, I want to start
14 generally, and then we'll get to this case.

15 THE WITNESS: In general, we cooperated
16 with the Duke police.

17 BY MR. THOMPSON:

18 Q: Okay. And how does that cooperation manifest
19 itself? What are examples of that cooperation?

20 A: If they needed information on employees or
21 students, we provide it. If they wanted copies of our
22 reports, we would provide them.

23 Q: What sort of information, in your experience,
24 did the Duke -- excuse me, the Durham police request from
25 the Duke Police Department? Obviously, key card

□

26

1 information.

2 A: Well, if there's a student or an employee
3 they're interested in, or who's a suspect, they might
4 need contact information on them, so we provide them an
5 address and phone number.

6 Q: What other sort of information?

7 A: We might give them a date of birth.

8 Q: All right. What about a social security
9 number?

10 A: No.

11 Q: why won't you give them a social security
12 number?

13 A: Because it's -- the other information is --
14 social security numbers, I didn't have a social security
15 number to provide them, but that's -- I wouldn't give
16 them my social security number. It's private. I'm not
17 going to give them anybody else's.

18 Q: Okay. So you try to be sensitive to the
19 privacy concerns of the students while you were
20 cooperating?

21 A: Yes.

22 Q: what other sorts of information did you
23 provide?

24 A: That's -- contact information. Identifiers.
25 Maybe -- maybe photographs, if we had them.

□

27

1 Q: Okay. Photographs. So where would you get
2 these photographs?

3 A: I might get them from the student database.

4 Q: Do you recall in this case whether you
5 provided photographs of the lacrosse players to the
6 Durham police?

7 A: Yes, I did.

8 Q: Okay. And how did you get those photographs?

9 A: In that case, I provided them the photographs
10 from a website.

11 Q: From a website?

12 A: My preference was to -- if I have -- in this
13 case, I didn't -- in this case, the photographs were

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14 available through goduke.com.

15 Q: And is that because they were members of the

16 lacrosse team?

17 A: Yes.

18 Q: Okay. All right. Did you ever -- now,

19 leaving aside this case for a moment, did you ever

20 provide e-mails to the Durham police?

21 A: I don't recall ever having done so.

22 Q: Okay. As a Duke police officer, would you

23 have access to the Duke e-mail accounts of the students?

24 A: No.

25 Q: Okay. Can you recall any instance in which

□

28

1 the Duke police sought to get access to the Duke

2 students' e-mail accounts?

3 A: I can't.

4 Q: Okay. So let's go back to this case. In

5 addition to photographs, and let's leave the key card

6 information to the side, was there any other information

7 that you provided to the Durham police?

8 A: In reference to lacrosse?

9 Q: Yes, sir.

10 A: Okay. Copies of the reports. Any report

11 that might have involved any of the lacrosse players.

12 Q: Just to be clear. So prior --

13 A: Prior reports.

14 Q: Okay.

15 A: I don't recall expressly doing so, but the

16 Chris Day report might have been among them.

17 The photographs. A roster from goduke.com
18 for the lacrosse players.
19 Q: Okay.
20 A: I don't recall, but I may have given them a
21 list of names and contact information. I don't remember.
22 Q: And you also gave them the key card
23 information. Is that right?
24 A: At a later date.
25 Q: Yeah. March 31st?

□

29

1 A: Yes.
2 Q: Okay. And all of this information you
3 provided, you did so because it was your understanding
4 that Duke had a policy of cooperating with Durham. Is
5 that correct?
6 A: Yes.
7 Q: Okay. And the photographs, was that your
8 idea to provide the photographs to them or did they
9 request them from you?
10 A: I'm trying to remember. I think -- I don't
11 remember if I asked Gottlieb if he needed photographs or
12 he mentioned that he needed photographs, but I had easy
13 access. I knew they were available through goduke.com,
14 so I provided them to him.
15 Q: Okay. And the names and contact information,
16 was that information Gottlieb requested or was that your
17 idea to provide it to him?
18 A: You know, I don't recall.
19 Q: All right. And the copies of the reports of

20 prior incidents relating to the lacrosse players, was
21 that your idea to provide that information?

22 A: No. He asked for what we might have on prior
23 incidents.

24 Q: Were there any privacy concerns relating to
25 that information?

□

30

1 A: Not -- my experience with Duke was another
2 agent -- if another law enforcement agency came and asked
3 us for information, we would provide it. If somebody
4 came in off the street and said, hey, can I have copies
5 of this stuff, then there's -- we would be less likely to
6 provide it.

7 Q: Is there a process to consider such requests?

8 A: We've got -- there's some reports that are
9 public record and there's some that aren't.

10 Q: And that's what determines whether you turned
11 the information over?

12 A: I'm sorry, yes.

13 Q: Do you recall anyone else at Duke ever asking
14 you for the information relating to their prior incidents
15 of the lacrosse team members?

16 A: Nobody asked me.

17 Q: Now, we've been talking about the fact that
18 you had interaction with Mr. Gottlieb. Why did you have
19 interaction with Mr. Gottlieb as opposed to someone else
20 within the Duke Police Department?

21 A: At that point, I was kind of sort of the lead
22 investigator.

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23 Q: who appointed you the lead investigator?
24 A: That would have been Phyllis Cooper.
25 Q: And she was one of the four --

□

31

1 A: At that point, my memory is wishy-washy, she
2 was either the captain in charge of investigations at
3 that time or she had been promoted to major, and I
4 don't -- I don't remember when that happened.

5 Q: Okay. How many other investigators were
6 there at that time in the Duke Police Department?

7 A: Again, I'm -- it's a long time ago. For
8 sure, John Shealey and Greg Stotsenberg were in
9 investigations with me.

10 Q: Okay. And -- oh, go ahead.

11 A: I think Anthony Rush had been moved out by
12 that time.

13 Q: So by the time -- when you're made the lead
14 investigator for the Duke Police Department, what was
15 your understanding of what you were supposed to be doing?
16 Was it basically providing assistance to Durham that they
17 requested?

18 MR. SUN: Objection.

19 THE WITNESS: Repeat the question,
20 please.

21 BY MR. THOMPSON:

22 Q: Sure. In your capacity as the lead
23 investigator for the Duke Police Department of the rape
24 allegation, what were your -- what was your
25 responsibility? Was it to provide assistance to the

□

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1 Durham Police Department?

2 MR. SUN: Objection.

3 THE WITNESS: No. I was simply a
4 contact.

5 BY MR. THOMPSON:

6 Q: So you weren't taking any independent steps
7 to investigate this crime?

8 A: I was not investigating the crime.

9 Q: Okay. Do you recall having any conversations
10 with Ms. Cooper about two the allegations of rape at
11 610 North Buchanan?

12 A: Specifically about the allegations? I don't
13 recall any. I don't recall.

14 Q: Do you recall having any conversation with
15 Ms. Cooper about any aspect of the rape hoax?

16 A: I recall one conversation with Phyllis Cooper
17 about the rape -- about matters relating to the rape
18 allegation.

19 Q: And what do you recall?

20 A: After Gottlieb had left, it may have been the
21 14th or the 15th, 16th, I can't remember the exact date.

22 Q: Of which month?

23 A: It would have been March.

24 Q: Okay, sir, go ahead.

25 A: I told her that Gottlieb had come by, and

□

33

1 that he -- what -- the information that I provided to him
2 at that time. And that he had asked whether we were
3 going to take the investigation since the property
4 belonged to Duke, and I told him no, and she -- that was
5 what I remember of the conversation.

6 Q: And she agreed?

7 A: Yes.

8 Q: Okay. So tell me about that conversation
9 with Gottlieb. He comes in and he says to you, "Is Duke
10 going to take the lead since you own the house?"

11 A: Well, I told him that I wasn't aware that
12 Duke owned the house, and, no, we weren't.

13 Q: Okay. But he asked you?

14 A: Yes.

15 Q: Okay. And why did you say, no, we're not
16 going to take the lead on investigating?

17 A: One, I wasn't aware that it was our property.
18 If it was our property, it was a residential property and
19 a rental property and not under our direct control.

20 Q: And when you say not under your direct
21 control, you mean what?

22 A: I mean that it's a rental property; it's
23 handled through a property manager. Typically those
24 properties aren't considered our primary jurisdiction.

25 Q: Can you think of any instance in which the

□

1 Duke police has exercised jurisdiction over a property
2 that is a residential rental property?

3 A: I can't.

4 Q: Can you think of other instances in which
5 Duke has declined to exercise jurisdiction over other
6 residential rental properties?

7 A: No.

8 Q: Okay. So just --

9 A: I don't recall any.

10 Q: Okay. And I'm sorry, I should have asked you
11 this earlier, but which lieutenant did you report to?

12 A: At the time of the lacrosse incident,
13 investigations was without a lieutenant.

14 Q: And then who did -- did you report up to
15 Ms. Cooper?

16 A: Yes, yes.

17 Q: Whether she was a captain or a major?

18 A: Right. I was reporting to Phyllis Cooper.

19 Q: Okay. All right. Sir, the way this is going
20 to work, I have a few documents today that I'm going to
21 mark as exhibits. You're welcome to take as much time as
22 you like to review them. Some of them, including this
23 first one, are fairly lengthy, so I'm going to direct
24 your attention to portions of them. But if you want to
25 review more of the document, including the whole

□

35

1 document, that's fine by me.

2 So with that background, I'd like to ask the
3 court reporter mark this document as Smith Exhibit 1.

4 [SMITH EXHIBIT NO. 1 WAS MARKED FOR
5 IDENTIFICATION]

6 Q: And, sir, actually before we look at this,
Page 31

7 you said that in your conversation with Ms. Cooper in the
8 middle of March, you told her about the information you
9 had provided to Mr. Gottlieb. Was that the roster and
10 the photos and the contact information and the prior
11 incidents?

12 MR. SUN: Objection.

13 THE WITNESS: Repeat the question,
14 please.

15 BY MR. THOMPSON:

16 Q: Sure. I'll ask it differently.

17 what was the information that you had
18 provided to Mr. Gottlieb that you described to Ms. Cooper
19 in this conversation that you've recounted?

20 A: I don't recall exactly. The reports,
21 definitely. I don't remember mentioning any of the other
22 stuff. I may or I may not have.

23 Q: Okay. Do you recall whether you provided
24 Mr. Gottlieb those photos within the first couple of days
25 of the investigation?

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1 A: I gave them to him that day.

2 Q: Okay. And the roster you gave to him March
3 15th or 16th?

4 A: Yes.

5 Q: Okay. And the names and contact information
6 you gave to him that same day, March 15th or 16th?

7 A: That's my recollection.

8 Q: All right. So we've got Smith Exhibit 1 in
9 front of us. These are supplemental case notes prepared

10 by Mr. Gottlieb.

11 A: Okay.

12 Q: It says Durham Police Department on top.
13 It's dated March 13, 2007, in the upper right-hand
14 corner.

15 And I'd like to direct your attention to page
16 7 of this document. You may want to pause at the bottom
17 of page 6. It gives the date -- the way Mr. Gottlieb has
18 this organized, he gives date, and then he has times. So
19 this is -- these entries that are on page 7 relate to
20 March 27, 2006.

21 A: Okay.

22 Q: And then if we turn to page 7, we look at an
23 entry for 1735, that's 5:35 p.m. Is that what 1735
24 means?

25 A: Okay, yes.

□

37

1 Q: This 5:35.

2 A: I'm sorry, what was your question?

3 Q: Yeah, my question -- I just want to make sure
4 I've got the nomenclature right of these types of police
5 reports.

6 The 1735 means 5:35 p.m. Is that right?

7 A: Yes.

8 Q: Okay. And if we look at that entry, it says,
9 "I," meaning Gottlieb, "advised communications we were
10 going to be executing papers on Duke campus. Duke PD
11 Investigator Smith assisted in the service at Edens 2C,
12 Room 204."

13 And so that's a reference to you. Is that
14 correct?

15 A: Yes.

16 Q: And do you believe this is accurate that you
17 did assist Gottlieb on March 27, 2006, with executing
18 these papers?

19 A: Yes.

20 Q: And in the next sentence it says,
21 "Investigator Himan," and it lists some other people, and
22 says "Smith and I went to the room."

23 Is that, again, a reference to you?

24 A: Yes.

25 Q: All right. And what do you recall -- and

□

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1 feel free to review this entry. Why don't you review
2 this entry.

3 [WITNESS EXAMINES DOCUMENT]

4 Q: So do you recall the events that are
5 described under this 6:01 p.m. entry?

6 A: In general.

7 Q: Okay. And is this entry from Mr. Gottlieb
8 consistent with your recollection?

9 A: That's almost six years ago. A lot of this
10 stuff in here, I don't remember.

11 Q: Now -- well, let me ask it this way.

12 Do you have an independent recollection of
13 any of the information described under the 6:01 p.m.
14 entry?

15 A: I'm sorry, ask me again.

16 Q: Do you independently recall any of these
17 events that are described under this entry?
18 A: Some stand out in my mind; others, either I
19 wasn't paying attention or I just don't remember.
20 Q: What stands out in your mind?
21 A: The silly things stand out in my mind, like
22 the drawings on the wall.
23 Q: Okay. Now, let me ask a general question.
24 A: Sure.
25 Q: Putting aside the lacrosse rape allegations,

□

39

1 when the Duke police wanted to -- excuse me -- the Durham
2 police wanted to execute a warrant on Duke University
3 property, would they generally give the Duke police a
4 heads-up?
5 A: Not always.
6 Q: Okay. Sometimes?
7 A: Sometimes.
8 Q: And in this instance when it talks about
9 executing papers, is it your understanding that what
10 Mr. Gottlieb had was a warrant?
11 A: He had a search warrant.
12 Q: Had a search warrant, okay.
13 And so when it says assisted in the service,
14 what did you do? Did you take your key card and open up
15 the door so he could go in?
16 A: I took them to the room where they were going
17 to serve the search warrant.
18 Q: Okay. And did you meet at the Duke police

19 station and drive over together, or did you meet outside
20 Edens 2C?

21 A: We met at the Duke police station. I don't
22 recall if I road over with them or if I drove my own car.

23 Q: Okay. And was there any other Duke police
24 officer that was involved in this?

25 A: No.

□

40

1 Q: Okay. And did they explain to you why they
2 were working through you as opposed to just going in and
3 serving the search warrant?

4 A: For service of papers. In general -- I can't
5 say in every instance because I've not been involved in
6 every instance. Duke, though, would prefer that a Duke
7 officer to be present in when Durham is serving an arrest
8 warrant or a search warrant.

9 MR. THOMPSON: We've been going about an
10 hour. Paul, do you have an objection if we take a
11 five-minute break?

12 MR. SUN: Thank you.

13 MR. THOMPSON: Five-minute break.

14 [RECESS - 10:33 A.M. TO 10:46 A.M.]

15 BY MR. THOMPSON:

16 Q: Welcome back, sir. Now, let's turn to
17 page -- I apologize, the page numbers are somewhat
18 obscured, but it's 23. Twenty-four is clear, so --

19 A: 4/8/06 1843?

20 Q: Yes, sir. So if we look towards the bottom
21 of the page, these are entries for April 13, 2006. And

22 there's an entry for 5:10 p.m. And it says, "I spoke to
23 Sergeant G. Smith" -- and that's you, right -- "and
24 discussed going to speak to some people on campus with
25 Investigator Himan. He stated he was getting ready to

□

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1 leave and requested we call the communication center. He
2 stated they would be able to give us access to any
3 building necessary from the public hallways."

4 Do you recall -- first of all, G. Smith, that
5 refers to you. Is that right?

6 A: Yes.

7 Q: Okay. And do you recall having a
8 conversation with Mr. Gottlieb about the fact that they
9 wanted to come over and get access to some of the
10 dormitories?

11 A: I recall having a conversation with Gottlieb
12 about him wanting to come over and interview some of the
13 lacrosse players at their dormitories.

14 Q: Okay. And what do you recall about that,
15 that he wanted to come over and have those interviews?

16 A: I recall that he wanted to come over and have
17 the interviews?

18 Q: Yeah.

19 A: I recall that I told him that to access the
20 dorms, he'd have to have somebody -- an officer meet him
21 to let him in.

22 Q: Okay. And do you recall that there came a
23 time where Mr. Gottlieb did come to campus and gain
24 access to one of the dormitories?

25 A: Yeah, I recall finding out about it.

□

42

1 Q: Okay. Well, let's have -- let's keep Smith
2 1, let's not put it too far away, but let's look at a
3 document titled -- we'll have this marked as Smith 2.

4 [SMITH EXHIBIT NO. 2 WAS MARKED FOR
5 IDENTIFICATION]

6 Q: Now, this says, "Durham Police in Residence
7 Halls," and it says, "Scenario of Events: At 4:45, or
8 1645 hours, Durham Police Investigator Himan notified
9 Duke University Department Investigator Gary Smith that
10 he would be coming to campus to interview students.
11 Director Dean sent an e-mail to key administrative staff
12 of this notification. The notification did not include a
13 specific time, nor a date." Now, we'll continue in a
14 minute.

15 Do you recall having any concerns that, hey,
16 these students are represented by Mr. Ekstrand, and now
17 we've got the police coming in to talk to them without
18 their lawyer. Were you concerned about that?

19 A: No.

20 Q: Why not?

21 A: The students can always say no.

22 Q: Do you think that having police enter into
23 their private residence might be intimidating to them?

24 A: I'm not aware that the police entered into
25 their private residence.

□

1 Q: Well, into the hallway outside their bedroom,
2 that's where you were giving them access, right?

3 A: Gave them access to the hallways outside of
4 their rooms.

5 Q: Yes. And you didn't have any concerns
6 whatsoever that their lawyer wasn't going to be present
7 during these questioning sessions?

8 A: No.

9 Q: Okay. Is that standard Duke policy and
10 procedure that if there's a criminal investigation and
11 the Duke police know that the students are represented by
12 counsel, that it's perfectly acceptable to allow Durham
13 police into the private hallways to ask questions of
14 these students?

15 MR. SUN: Objection.

16 THE WITNESS: Re- --

17 BY MR. THOMPSON:

18 Q: Sure. Is it the Duke University Police
19 Department's policy that if the Duke police know a
20 student is being investigated for a crime, has a lawyer,
21 that it's perfectly acceptable to allow a Durham police
22 officer to come into a dormitory into the hallways and
23 try to question those students without their lawyer?

24 A: It is perfectly acceptable, to my knowledge,
25 for an investigator from Duke or any other agency to

□

1 approach a student who is possibly a suspect in a crime

2 and ask them if they want to -- if they're willing to
3 talk to them.

4 Q: Even if you know that they are represented by
5 counsel?

6 A: It's the student's responsibility or the
7 person that's being questioned responsibility to say "I'm
8 represented by counsel. I don't want to talk to you."

9 Q: Now, what about letting them into their
10 bedrooms, would that be -- would that be perfectly
11 acceptable to have allowed Mr. Gottlieb into their
12 bedroom to question them?

13 A: I did not, and to my knowledge, Sergeant
14 Gottlieb was not allowed into their bedroom.

15 Q: I'm not asking what happened, I'm asking
16 whether it would have been acceptable to have allowed
17 them into the bedrooms to ask these questions of these --

18 A: It would not have been acceptable for
19 Gottlieb to enter their private space, their dormitory
20 rooms, without their permission.

21 Q: why not?

22 A: It's their private space.

23 Q: Okay. But are there bathrooms in their
24 rooms, or do they have to go into the hallway to go to
25 the bathroom?

□

45

1 A: There are bathrooms in the hallway.

2 Q: All right. So wouldn't the hallway -- if --
3 to go to the bathroom, you have to go from your bedroom
4 to the bathroom, wouldn't the hallway be private space

5 too?

6 A: My understanding is that the hallways and the
7 common areas are just that, they're not private. They're
8 hallways. Lots of people use them; therefore, they're
9 not private.

10 Q: well, to use them, you have to have a key
11 card or you have to have a Duke University employee let
12 you in, right?

13 A: But the hallways -- my understanding has
14 always been the rooms are private. If I wish to enter
15 them without the permission of the resident, I need a
16 search warrant or an administrative warrant from the
17 university for the rooms. For me to enter as a police
18 officer the hallways or the common areas, I don't.

19 Q: Now, did you -- well, let's continue on with
20 this memo. It says, "Sergeant Gottlieb notified the
21 Emergency Communications Center at 1721 hours. He was on
22 campus and needed access to Edens C. Officer Bolden was
23 dispatched to that location and gave him access to the
24 first floor of Edens 2C at 1730 hours."

25 Do you have any knowledge that this had

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46

1 occurred?

2 A: I didn't recall the specific officer that
3 responded. I knew that Sergeant Gottlieb had come to do
4 his interviews, I found out later that evening.

5 Q: Okay. Now, it says -- if we look down to
6 "Solutions," says, "All requests for interviews of
7 students by the Durham police will be coordinated with

8 Director Dean.

9 That didn't happen in this instance, did it?

10 A: No.

11 Q: Okay. And the Communications Center, what's
12 that? Is that an operator?

13 A: That's our dispatch.

14 Q: Okay. Your dispatch. And then we continue
15 with this. It says, "This coordination will include
16 notification to student affairs, general counsels, and
17 other key administrators."

18 So the lawyers were going to be informed
19 going forward if this was going to happen again. Is that
20 correct?

21 A: Yes.

22 Q: "And the locations of such interviews will be
23 determined as part of this coordination. The Durham
24 police will be discouraged from conducting interviews in
25 the residential community."

□

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1 So is this a shift in policy from what you've
2 described?

3 A: That is a change in how we conducted our
4 affairs.

5 Q: Okay. So at the time that Mr. Gottlieb went
6 in to Edens C, it was perfectly acceptable, but in the
7 aftermath of that, there was a change in policy. Is that
8 fair to say?

9 A: Yes.

10 Q: Okay. All right. Now, let's look back at

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11 what was Exhibit 1, and to page 8. And these are entries
12 for March 31, 2006. If you look at the entry for 1500
13 hours, or 3 p.m., it says, "Investigator Smith and
14 Stotsenberg from Duke police" -- oh, do you see where I'm
15 reading?

16 A: what time?

17 Q: Sorry. 3 p.m., 1500.

18 A: Okay.

19 Q: "Investigator Smith and Stotsenberg from Duke
20 police drove up to the District 2 Substation as I was
21 leaving. And they had three reports they delivered,
22 reports to me requested by us. Two were for staff at
23 Duke who were being harassed due to this case (Duke
24 reports 2006-1548 and 2006-1515), and one is a key card
25 report for the team members on March 13, 2006, to

□

48

1 March 14, 2006."

2 Is this an accurate statement of what
3 happened at 3 p.m. on March 31st?

4 A: I recall giving a key card report. I
5 honestly don't remember giving them anything else.

6 Q: Okay. So you don't recall what these other
7 two reports were?

8 A: I don't recall, no.

9 Q: I'd like to -- you can put Smith 1 to the
10 side, sir.

11 MR. THOMPSON: I'd like to ask the court
12 reporter to mark as Smith 3 the following document.

13 [SMITH EXHIBIT NO. 3 WAS MARKED FOR

Smith, Gary - Vol. 1 (2)
IDENTIFICATION]

14

15 BY MR. THOMPSON:

16 Q: Thank you. So, sir, this is an e-mail from
17 Aaron Graves dated July 25, 2007, to Kemel Dawkins,
18 subject "Confidential." who is -- is Dawkins a man or a
19 woman?

20 A: A man.

21 Q: who is Mr. Dawkins?

22 A: At that time, he was Aaron Graves' boss.

23 Q: Okay.

24 A: I don't recall the position.

25 Q: Is he still in that position?

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1 A: No.

2 Q: Okay. Has he left Duke?

3 A: Yes.

4 Q: Okay. where is he now?

5 A: I have no idea.

6 Q: Okay. Let us continue. This e-mail starts,
7 "Today I met with Investigator Gary Smith along with
8 Major Michael Snellgrove of the DUPD."

9 Is that Duke University Police Department?

10 A: Excuse me?

11 Q: Is DUPD --

12 A: Yes.

13 Q: Okay. And who was Mr. Snellgrove?

14 A: He was a major at the time this was written.

15 Q: Okay. And why was he involved in this
16 conversation?

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17 A: He was a major, and you'd have to ask Aaron
18 Graves.

19 Q: Okay. "The purpose of this meeting was to
20 hear for myself Investigator Smith's role in releasing
21 the card access information to members of the Durham
22 Police Department investigating the Duke lacrosse rape
23 case. In our conversation, he advised me that they
24 offered and obtained this information as a resource to
25 DPD Investigator Gottlieb."

□

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1 So you offered to Mr. Gottlieb to get this
2 key card information for him. Is that true?

3 A: Yes.

4 Q: And why did you do that?

5 A: I had in the past used key card information
6 in the course of my investigations, and it occurred to me
7 that it might be helpful to Gottlieb, so I asked him if
8 he wanted it, and he said yes.

9 Q: And it might be helpful because it indicates
10 whether a student was in Durham at the time of the
11 alleged crime?

12 A: Yes.

13 Q: All right. And it also helps to pinpoint the
14 time of their movements. Is that right?

15 A: If they've used their card, yes.

16 Q: And it was particularly important here where
17 you had a witness who couldn't accurately identify who
18 was at the party, correct?

19 A: I never spoke to Crystal Mangum. I wasn't

20 privy to the contents of her interviews, and I don't
21 remember ever having a conversation with Gottlieb about
22 what she told him, so in reference to that point, I don't
23 know.

24 Q: well, with the benefit of hindsight, you know
25 that she, Ms. Mangum, had significant problems

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1 identifying who was at the party, right?

2 A: with the benefit of hindsight, all I can say
3 is I've done my best to avoid the Duke lacrosse case.

4 Q: You've been -- you were an investigator for
5 many years. If you had wanted to find out whether these
6 individuals were in Durham that night to make sure that
7 someone who was gone for spring break wasn't indicted,
8 the key cards would have been a very important piece of
9 corroborative evidence, correct?

10 A: The key card would have allowed --
11 information would have allowed them to -- should have
12 allowed them to know who was -- no, that's not quite
13 correct. It would have provided them with information on
14 who was on campus, where they were on campus, within a
15 certain time frame.

16 Q: And that's critical information in an
17 investigation.

18 A: It's helpful information.

19 Q: And it's particularly helpful if you have a
20 witness who is impaired and can't remember who was the
21 alleged perpetrator.

22 A: In my mind, particularly helpful irregardless

23 of the condition of the witness.

24 Q: why is it particularly helpful?

25 A: It's -- if you've got a time and a place

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1 where something happened, then if people are using their
2 cards at other places at that time or within a time frame
3 around that time, it says they were or they weren't at a
4 specific location.

5 Q: Had you ever provided key card access
6 information to the Durham police on any other occasion?

7 A: I could not give you a specific instance. I
8 have at times provided the Duke -- excuse me -- Durham
9 police with reports that would have included key card
10 information.

11 I have been told by another investigator that
12 she has, in fact, and other investigators have, in fact,
13 provided key card information to Durham on occasion.

14 Q: Which investigator is that?

15 A: That would have been Sara-Jane Raines.

16 Q: And in the instances where you provided this
17 information, was that before March of 2006?

18 A: Yes.

19 Q: And after March of 2006, have you ever again
20 provided key card access information to the Durham
21 police?

22 A: Not that I'm aware of.

23 Q: Okay. All right. Now, if we go to the last
24 sentence of this first full paragraph, it says, "He,"
25 meaning you, "provided him," meaning Gottlieb -- so Smith

□

1 provided Gottlieb a copy of a report containing access
2 information for a specified period of time.
3 A: I'm sorry, where are we at?
4 Q: Okay. sorry. It's the first full paragraph.
5 A: Okay.
6 Q: And last sentence. And there are a lot of
7 pronouns here. You can read it -- I mean, if you think
8 I'm wrong, that's fine. But I think the "he" refers to
9 you and the second -- and the "him" refers to Gottlieb
10 because it says, "He provided him a copy of a report" --
11 and the "he" is you, correct?
12 A: Right.
13 Q: And the "him" is Gottlieb, correct?
14 A: Yes.
15 Q: -- "containing access information for a
16 specified time period of all men's lacrosse players
17 entering their campus residences." Is this accurate?
18 A: I provided Mark Gottlieb with a card reader
19 report for card reader activity for members of the men's
20 lacrosse team for a time frame.
21 Q: Okay.
22 A: That would have included any card reader
23 activity.
24 Q: Okay. For all the members of the lacrosse
25 team?

□

1 A: I'm trying to recall what I used as the
2 basis. And if it was the roster, then it would have been
3 for the men's lacrosse players listed on the roster.
4 Probably with one exception. Maybe not. I don't
5 remember. I remember I used the roster as my guide. I
6 would have used the roster as my guide.

7 Q: Is the one possible exception the
8 African-American player, Mr. Sherwood?

9 A: well, I know I did not provide his picture.

10 Q: Okay.

11 A: I don't recall if his name was among those on
12 the key card information or not. I don't recall.

13 Q: All right. But all the white members of the
14 team, you provided their key card information to
15 Mr. Gottlieb. Is that right?

16 MR. SUN: Objection.

17 THE WITNESS: I -- again, I don't
18 remember counting how many names were on the roster. If
19 they were on the roster, I provided it. If they weren't
20 on the roster, I probably didn't. I don't know.

21 BY MR. THOMPSON:

22 Q: All right. Now, let's go to the next
23 paragraph. It says, "Investigator Smith was asked why he
24 voluntarily provided such information and if at the time
25 he was aware that such information was protected under

□

1 FERPA." That's F-E-R-P-A.

2 "He stated that information of this type was
3 provided in the past and he thought it would aid in the

4 investigation by the Durham police. He also stated that
5 he was not trained upon FERPA requirements, and felt it
6 was appropriate to share with another law enforcement
7 agency based on past practices. Nevertheless, he had
8 some concerns and queried DUPD Major Minnis and Captain
9 Raines for guidance after he turned over the report and
10 was advised it was permissible."

11 Let's start. What was the nature of the
12 concerns you had -- or strike that. Let me ask this.

13 How did you come to have concerns?

14 A: I'm not -- well, I did -- one, I don't recall
15 the contents exactly of my conversation with Aaron Graves
16 and Michael Snellgrove, though I will -- yes, I had --
17 concerns developed.

18 Q: Yeah.

19 A: Why, I couldn't pin it on any particular
20 incident or something happening or whatever. I just --
21 after I had given Gottlieb the information, I grew a
22 little uneasy with it and asked some questions.

23 Q: Now, were you a little uneasy because you
24 were aware that this was private information?

25 A: It was information -- no. Because this was

□

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1 information I accessed as a police officer on a regular
2 basis.

3 Q: Yeah. Like you access private information
4 all the time as a police officer, don't you?

5 A: In this particular instance, this
6 information, the card reader information regarding Duke's

7 students or anyone who uses the card system, I access on
8 a regular day-to-day -- as an investigator, access on a
9 regular day-to-day basis.

10 Q: Sure. And if someone walks into your office
11 in the beginning of 2006 and said, "Investigator Smith,
12 I'd like the key card information on this student," you
13 would say, "No, sorry."

14 A: No, you're right, I would.

15 Q: Right. And that's because you understood
16 even before this incident that this information, although
17 you had access to it by virtue of your authority as a
18 police officer, was private information.

19 A: And like our reports where I wouldn't
20 necessarily give it to Joe Citizen walking in off the
21 street, I wasn't necessarily uncomfortable or wrong to
22 provide it to another police agency.

23 Q: So you knew it was private, but you thought
24 you were maintaining the confidentiality and privacy even
25 though you were giving it to Gottlieb.

□

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1 A: I don't even -- I can't even say I thought
2 about it on those terms.

3 Q: Okay. But you knew at some level which gave
4 rise to this uneasiness that this was sensitive
5 information.

6 A: If I could express to you specifically, or
7 everybody else specifically, why I grew concerned or
8 uncomfortable about it, I would. I can't -- it was just
9 a feeling that maybe I better ask some questions.

10 Q: Okay. And I just want the record to be clear
11 because I'm not sure it is. But if someone had walked
12 into your office off the street in February of 2006 and
13 said, "Officer Smith, please give me the key card
14 information for this Duke University student," you would
15 have said no.

16 A: I'd ask them, "Who are you," and depending on
17 their answer and their reasons, made a decision.

18 Q: Right. And if it was just a member of the
19 public who said I'm curious, you would not have turned it
20 over.

21 A: I would have referred them to the card
22 office.

23 Q: To the guard office.

24 A: Card office.

25 Q: Card office. But you wouldn't have given

□

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1 that information.

2 A: No.

3 Q: Okay. And why not?

4 A: It's none of their business.

5 Q: Okay. Now, you say that you -- according to
6 this, it indicates that you said you weren't trained on
7 FERPA requirements, but you were aware that there were
8 laws relating to the privacy of this key card
9 information, correct?

10 A: I was aware in a very general sense, real
11 general sense, about FERPA. Beyond that, no.

12 Q: Now, you spoke to Major Minnis and Captain

13 Raines. Do you recall when that was?

14 A: I don't remember. My recollection is I spoke
15 to them after I had released the key card information.
16 But that's six years after the fact. This may be correct
17 and I don't know. But it would have --

18 Q: well, that's consistence with this, sir,
19 because it says, "Nevertheless, he had some concerns and
20 queried Major Minnis and Captain Raines for guidance
21 after he turned over the report" --

22 A: Okay. I didn't catch that.

23 Q: -- "and was advised it was permissible."
24 In conversation, did you tell them, "I've
25 turned over this information and I have concerns whether

□

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1 I did the right thing"?

2 A: No. I just asked them in general about
3 whether it was -- and -- well, whether we released card
4 reader information.

5 Q: And why didn't you tell them? Were you
6 afraid you were going to get in trouble if they knew that
7 you had turned it over?

8 A: Well, at that point, that wasn't even a --
9 that wasn't even a thought. I was just seeking
10 information.

11 Q: But you made a decision not to tell them that
12 you had turned it over already.

13 A: Yes.

14 Q: Okay. And what do you recall them telling
15 you? Was it in that conversation that Captain Raines

16 told you, well, I've turned it over in the past, key card
17 information?

18 A: Again, all I remember -- with Raines -- let's
19 see, I remember -- all I remember is she didn't have a
20 problem with it. And it may have been in that
21 conversation she mentioned that there's been
22 conversations since where she's clearly said that.

23 Q: Did they ask you why are you asking this
24 question?

25 A: No.

□

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1 Q: Did you mentioned that this was part of the
2 lacrosse situation? That, Gee, I've been thinking about
3 this and wanted to know whether this would be okay?

4 A: I don't recall if I mentioned specifically
5 the lacrosse incident and the release.

6 Q: Okay. "He also stated that he contacted
7 Sergeant Gottlieb and expressed his concern and suggested
8 that they obtain a subpoena if they plan to use any
9 information derived from the report in court
10 proceedings."

11 If you were told it was permissible, why did
12 you go ahead and e-mail Gottlieb and tell him you better
13 get a subpoena or a court order?

14 A: I didn't e-mail him; I called him. And I was
15 concerned that my giving him the information without a
16 subpoena or the way I had given him the information might
17 cause him difficulties in his investigation in using the
18 information.

19 Q: Now, where did that concern come from? Your
20 understanding of FERPA?

21 A: I was afraid that I had -- at that point I
22 came to the -- despite this, I came to a conclusion that
23 I had more than likely violated FERPA, and I did not know
24 whether that would cause a problem for Gottlieb or not,
25 so I contacted him and made that suggestion.

□

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1 Q: And what did Gottlieb say to you?

2 A: He would obtain a subpoena.

3 Q: So he immediately understood what you were
4 saying and realized, yeah, I better get this information
5 through a subpoena?

6 A: You know what? I don't have a clue what
7 Gottlieb understood or what he didn't understand.

8 Q: Okay.

9 A: All I know is that he eventually did apply
10 for a subpoena.

11 Q: Now, I'd like to -- keep this Smith 3 in
12 front of you, sir, but I'd like to have the court
13 reporter mark this document as Smith 4.

14 [SMITH EXHIBIT NO. 4 WAS MARKED FOR
15 IDENTIFICATION]

16 Q: Now, this is an e-mail from Kemel Dawkins to
17 Susan Taylor, copy to Aaron Graves, Denise Evans and
18 T3@duke.edu.

19 Do you know T3 is Tallman Trask, III?

20 A: I've heard him referred to as that, yes.

21 Q: All right. And who is Ms. Taylor?

22 A: where?
23 Q: The person who sent this e-mail, Suzanne
24 Taylor.
25 A: I don't know who she is.

□

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1 Q: Okay. And this is -- if we look at the
2 e-mail, it's dated August 20, 2007. It starts
3 "Confidential Memorandum" to Kemel Dawkins from H. Clint
4 Davidson, Jr. Do you know who he is, Mr. Davidson?
5 A: No, I don't.
6 Q: Okay. Let's look at this document. And it
7 says, "Question on disciplinary action for Duke police
8 officer. I am writing to summarize my understanding of
9 the disciplinary action question you, Aaron Graves, and I
10 recently discussed, as well as to recommend a course of
11 action."
12 were you aware that there was discussions
13 about disciplining you?
14 A: No.
15 Q: Okay. Well let's continue. It says, "The
16 circumstances, as I understand it, is as follows: In the
17 early stages of the lacrosse investigation, a member of
18 the Duke police staff was approached by a Durham Police
19 Department investigator. In the course of their
20 discussion regarding the identification of possible
21 perpetrators, the Duke police officer indicated that
22 swipe card reports of Duke dorm entrance and egresses
23 might be helpful. The Duke police officer requested this
24 data from the Duke card office and provided it to the

25 Durham police investigator. The Duke police officer had

□

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1 some uneasiness about the matter and checked with his
2 supervisor, as well as one additional supervisor, to
3 confirm that the appropriate action had been taken. The
4 supervisor and the higher-level authority confirmed that
5 the action taken was appropriate."

6 Does this refresh your recollection that in
7 fact in your conversation with Minnis and Raines, that
8 you in fact had told them what you had done, and that
9 they told you your action was appropriate?

10 A: I don't remember telling either Minnis or
11 Raines that I had released the card reader information.
12 All I asked them was about whether doing so was a
13 problem. I never said Sara -- Sara-Jane, I gave them
14 information. I never told them.

15 Q: Because you were afraid you might get in
16 trouble, right?

17 A: Yes.

18 Q: Okay. Now, let's go back to what was marked
19 as Smith 3. And, actually, we're done with Smith 3, too,
20 sir.

21 This is going to be Smith 5.

22 [SMITH EXHIBIT NO. 5 WAS MARKED FOR
23 IDENTIFICATION]

24 Q: Okay. So, now, this is an e-mail from you
25 dated April 14, 2006, 10:09 p.m., to Mark Gottlieb,

□

1 copying James Schwab, Leila Humphries, blind copying
2 Mr. Dean, and it's called, "Card Readers Records." And
3 it reads, "Sergeant Gottlieb, per your request for card
4 reader records on the lacrosse team from 900 hours on
5 March 13, 2006, to 0400 on March 14, 2006, the release of
6 that information will require a court order. The order
7 should be directed to Matt Drummond at the Duke card
8 office. Please call me if I can be of further
9 assistance."

10 You sent this e-mail, correct?

11 A: Yes.

12 Q: Okay. And you testified a few minutes ago
13 that you haven't sent an e-mail, but does this refresh
14 your recollection that you did send an e-mail to Gottlieb
15 about this?

16 A: After I had spoken to him about it.

17 Q: After you had spoken to him about it.

18 A: Yes.

19 Q: Okay. And did he suggest an e-mail, or did
20 you just think it would be prudent to follow up?

21 A: He didn't suggest it; I sent it.

22 Q: Okay. And did Mr. Dean, who you blind
23 copied, he was the chief of the police department,
24 correct?

25 A: Yes.

□

1 Q: Did you typically blind copy him on e-mails

2 you sent?

3 A: This was -- I remember, seem to remember,
4 directed to send this to Gottlieb in response to his
5 request; therefore, that's why I copied the people. No,
6 typically I don't blind copy Robert Dean.

7 Q: Right. And I'm sorry. So you were directed
8 by whom? Schwab and Humphries?

9 A: It may have been -- I don't remember exactly.
10 I don't remember.

11 Q: Okay. And you were directed because they
12 knew the information had been released and they wanted it
13 done the right way, correct?

14 A: No.

15 Q: So then tell me the sequence of events. You
16 called Gottlieb, and what happened?

17 A: At that point, the only one -- okay. The
18 sequence of events.

19 Q: Well, you were about to say at that point the
20 only person --

21 A: I knew that I had released the information.
22 Gottlieb knew I had released the information. Greg
23 Stotsenberg knew I had released the information because
24 he was in the car with me when I gave it to him. No one
25 else knew.

□

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1 Q: Did you and Stotsenberg agree to keep this
2 between the two of you?

3 A: I don't recall asking Greg Stotsenberg not to
4 share the information.

5 Q: By "the information," you mean the fact that
6 you had --

7 A: If I did, I don't recall it.

8 Q: Okay. But was there, at the very least, an
9 understanding between the two of you to keep this quiet
10 and not to tell others within the department that you had
11 done this, you had released the information?

12 MR. SUN: Let him finish his question.

13 THE WITNESS: Yes. Repeat the question,
14 please.

15 BY MR. THOMPSON:

16 Q: Yes, sir. Was there, at the very least, an
17 understanding between you and Mr. Stotsenberg that you
18 did not want him telling people in the Duke Police
19 Department that you had turned over the key card
20 information on March 31st?

21 A: I will even go so far as to say there was an
22 understanding. I don't recall a conversation to that
23 effect.

24 Q: So when you say nobody else knows, for all
25 you knew, they all knew because Stotsenberg told them.

□

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1 A: I know I hadn't told anybody else.

2 Q: Okay. And you don't --

3 A: I can't comment on Greg or Sergeant Gottlieb.

4 Q: Have you ever had any conversation with
5 Mr. Stotsenberg about the release of this key card
6 information?

7 A: He was present when I gave Gottlieb the

8 information. I don't recall any conversations.

9 Q: well, since this lawsuit has been filed, have
10 you spoken to him about the fact that, you know, you're
11 going to be deposed, for example?

12 A: we've had conversations since the lacrosse
13 incident. I don't recall if those conversations included
14 the topic of a deposition. They may or they may not
15 have.

16 Q: Do you recall whether those conversations
17 reference the fact that this release of the key card
18 information had turned into a problem?

19 A: They may have. I don't recall.

20 Q: Okay. Do you recall anything about your
21 conversations with him as they relate to the key card
22 information?

23 A: No.

24 Q: Now, is it your testimony that you wrote this
25 e-mail yourself, or did someone ghostwrite this for you?

□

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1 A: I wrote this myself.

2 Q: All right. And you say the release of that
3 information will require a court order. So at the point
4 you're writing this, you know what FERPA requires,
5 correct?

6 A: Yes.

7 Q: Okay. And how did you get your knowledge
8 about what FERPA required between March 31st and April
9 14, 2006?

10 MR. SUN: Mr. Smith, if answering that

11 question would require you to reveal communications with
12 an attorney where you were seeking legal advice, I
13 instruct you not to answer the question.

14 THE WITNESS: Okay. In this case, the
15 fact that it would require a court order was communicated
16 to me by I think James Schwab, maybe Robert Dean, I don't
17 remember who communicated it to me, that Duke would not
18 release the information without a court order; therefore,
19 I sent Gottlieb the e-mail to the effect that he would
20 require -- that it would require a court order for him to
21 get the information.

22 BY MR. THOMPSON:

23 Q: Did you tell Mr. Stotsenberg that you had
24 sent this e-mail?

25 A: I don't recall.

□

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1 Q: Were you worried at this point that you sent
2 this e-mail that you had, in fact, violated the privacy
3 rights of the Duke students?

4 A: I had at this point concerns that I may
5 have -- still, it was a may have -- violated FERPA by
6 releasing the card reader information.

7 Q: Did you ever think you owed it to the
8 students to tell them that you had done this?

9 A: No.

10 Q: Why not?

11 A: It never occurred to me.

12 Q: And you reference a court order in this
13 e-mail. You mean a subpoena, correct?

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14 A: Subpoena, court order.

15 Q: All right. And who told you it should be

16 directed to Drummond?

17 A: I don't recall.

18 Q: Who are the possible people that would have

19 told it to you?

20 A: It may have been James Schwab. It may have

21 been Robert Dean. It may have been -- I may have simply

22 put it there out of my personal knowledge. I don't

23 recall why I -- other than he's the manager of the Duke

24 card office, and so -- or was.

25 Q: Did you tell Mr. Drummond that the key card

□

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1 information had already been released?

2 A: I didn't tell anyone that I had released the

3 card reader information.

4 Q: And since Mr. Drummond was unaware of the

5 release of the card information, you knew he would

6 proceed on the assumption the information had not been

7 released, correct?

8 A: Correct.

9 Q: You knew Mr. Drummond wouldn't tell the court

10 that the information had been released?

11 A: Matthew Drummond did not know the information

12 had been released.

13 Q: You knew that Mr. Drummond would not tell the

14 lacrosse team members that their key card information had

15 been released, correct?

16 A: That wasn't even a thought.

17 Q: well, it follows necessarily, since you --
18 you admitted you kept him in the dark about the release
19 of the information, correct?

20 A: I admit I told no one.

21 Q: Including Mr. Drummond?

22 A: Including Mr. Drummond that I had released
23 information.

24 Q: And you told Gottlieb to go to Drummond to
25 get the information, correct?

□

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1 A: Yes.

2 Q: And you knew, therefore, that Drummond was
3 going to proceed on the assumption that it hadn't been
4 released?

5 A: Yes.

6 Q: And you knew that when he communicated with
7 the players, he would proceed on the assumption that it
8 hadn't been released, the key card information, correct?

9 A: Yes.

10 Q: All right. And now when -- was there any --
11 did Gottlieb ever respond to this e-mail?

12 A: I don't recall.

13 Q: Okay. Now -- and you've been a police
14 officer, you've seen subpoenas issued, correct?

15 A: Yes.

16 Q: When subpoenas come in to Duke, does the
17 general counsel's office typically get involved?

18 A: Let me backtrack on that.

19 Q: Okay.

20 A: I don't recall -- I recall -- I have sought
21 subpoenas and court orders. I don't generally get
22 involved with subpoenas or court orders from outside to
23 the university.

24 Q: Okay. So you've sought subpoenas to further
25 your investigations?

□

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1 A: My investigations.

2 Q: All right. And when those subpoenas are
3 sought, the suspects' lawyers are notified, correct?

4 A: The subpoenas are served, and whether they
5 are -- I don't know whether their attorneys are notified
6 or not. I can make assumptions, but I don't know.

7 Q: Well, what's your assumption? Is the
8 assumption, yes, that if they have a lawyer, the lawyer
9 finds out there's been a subpoena?

10 A: My assumption is that if they have -- if
11 they're served with a subpoena and they have an attorney,
12 they're going to involve their attorney.

13 Q: Okay. And is your assumption that they have
14 the right to try to contest the subpoena, to so-called
15 quash it?

16 A: I guess, yes.

17 Q: And sometimes you get your subpoena and
18 sometimes it's quashed; isn't that right?

19 A: Yes.

20 Q: Okay. And that's a court -- that's a
21 decision a judge makes, right?

22 A: Yes.

23 Q: Okay. With involvement from the target of
24 the subpoena, correct, or their lawyer if they have one?
25 A: I assume.

□

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1 Q: Okay. Now, how did you communicate with
2 Mr. Gettliffe? Roland Gettliffe is the individual who
3 provided you the key card information?
4 A: Yes.
5 Q: Okay. And why did you decide to communicate
6 with him as opposed to someone else in the key card
7 office?
8 A: He was my usual contact person.
9 Q: All right. And did you tell Mr. Gettliffe
10 not to tell anyone that he had produced this information
11 for you?
12 A: I asked him if -- unless someone asked him,
13 not to volunteer it.
14 Q: And did he agree to do that?
15 A: He didn't disagree.
16 Q: Okay. And, in fact, he's abided by that
17 understanding because he's never, to your knowledge,
18 disclosed that to anyone, has he?
19 A: I don't know if he has or not.
20 Q: Okay. You've never spoken to him about
21 whether he has?
22 A: No.
23 Q: Have you had any conversation with him about
24 the Duke lacrosse case other than the conversation you
25 just described?

□

1 A: No.

2 Q: Okay. And then in that conversation, was
3 that a phone call that you made to him or was it an
4 e-mail?

5 A: It would have been a phone call.

6 Q: And did he understand that he could get in
7 trouble too?

8 A: I don't know what he understood.

9 Q: Okay. Now, how did he go about generating
10 that information?

11 A: I provided him with a list of names and I
12 believe unique IDs or student IDs. Beyond that, you
13 would have to ask Roland.

14 MR. THOMPSON: Okay. So let's have this
15 marked as and Smith 6.

16 [SMITH EXHIBIT NO. 6 WAS MARKED FOR
17 IDENTIFICATION]

18 BY MR. THOMPSON:

19 Q: So this is an e-mail sent from you to
20 Mr. Gettliffe, dated March 30, 2006, 6:08 p.m., subject,
21 "The 46." Is that correct?

22 A: Yes.

23 Q: All right. And what are these numbers?
24 Please walk me through what this document is.

25 A: what numbers?

□

1 Q: Well, we've got a column that says "Student
2 ID."

3 A: Okay. The first number is the student ID
4 number. There's their name and then there's their unique
5 ID.

6 Q: Okay. And what is the unique ID?

7 A: That's the identification number on the back
8 of the card.

9 Q: Okay. And is this information you generated
10 and you gave to Mr. Gettliffe?

11 A: Yes.

12 Q: Okay. How did you get this information?

13 A: Through the student database.

14 Q: How long did it take you to -- did it take a
15 couple of hours to get, you know, 46 individuals'
16 information?

17 A: No, I don't think it took that long.

18 Q: Okay. What is the process? You sit there
19 and you type in the person's name and the student ID and
20 the unique number comes up?

21 A: Type in their name; that and other
22 information comes up.

23 Q: Okay. And then do you have to type that
24 information to create a list like this, or were you able
25 to copy and paste it?

□

1 A: I think I cut and pasted.

2 Q: Okay. And had you called him before you sent
3 this e-mail?

4 A: Yes.

5 Q: Okay. And was it in that conversation that
6 you told him don't tell anyone or was that later?

7 A: That was later.

8 Q: Okay. And in this first conversation, what
9 did you tell them? I would like this information to give
10 to Durham?

11 A: I may have. I don't recall the exact
12 conversation other than I needed the information. And
13 considering how I titled it, I'm pretty sure I told him
14 who I was going to give it to.

15 Q: Okay. And that's why it was "The 46,"
16 because there were 46 white lacrosse players, right?

17 A: Yes.

18 Q: Okay. And did he express any concerns to you
19 about the path you were proceeding down?

20 A: I don't recall any.

21 Q: Do you recall anything else about that
22 conversation with him?

23 A: No.

24 Q: Do you recall anything else about any other
25 conversations you've had with him relating to the release

□

1 of this key card information?

2 A: I only recall the two that we discussed
3 already.

4 Q: Just looking for a moment back at Smith 5,
5 you sent that e-mail at 10:09 p.m. Were you getting a
6 lot of pressure from your supervisors to get that e-mail

7 out?

8 A: It's -- I think in parenthesis it's GMT.

9 Q: Ah, Greenwich Mean Time. Okay. So that's
10 five, six hours, depending on daylight savings.

11 A: Yes.

12 Q: Okay. Very good.

13 You've said -- did you ever start to have
14 concerns about the integrity of the investigation that
15 Gottlieb and Nifong were conducting?

16 MR. SUN: Objection.

17 THE WITNESS: I wasn't involved in the
18 investigation to any great extent, any real extent, of
19 Gottlieb and Nifong, so I don't have an opinion.

20 Q: Even today, you don't have an opinion?

21 A: No, I don't have an opinion.

22 Q: Do you think -- are you confident that the
23 members of the 2006 lacrosse team were, in fact, innocent
24 of the charges of sexual assault or rape, or is there
25 still doubt in your mind?

□

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1 A: I -- at this point, essentially the courts
2 have found that they weren't, that they weren't guilty,
3 and that is sufficient for me.

4 Q: Okay. Did there come a time when you learned
5 that the DNA evidence had come back negative? In other
6 words, there was none of "The 46" white players' DNA on
7 Ms. Mangum, in Ms. Mangum, on her possessions or body?

8 A: I recall news reports. That's all.

9 Q: I mean, you're an investigator. Have you

10 ever seen an actual rape where there was no DNA found of
11 the actual assailant, on the victim or near the victim or
12 on her body, possessions?

13 A: Repeat the question, please.

14 Q: Yes. In your experience as an investigator,
15 have you ever found/investigated an actual instance of
16 rape where the rape you ultimately concluded had occurred
17 where there was no DNA evidence on the assailant that was
18 ever found in connection with the crime? And let's say
19 in the last ten years since DNA became, you know,
20 prevalent.

21 A: Myself? Actually, yes.

22 Q: In how many instances?

23 A: One, that I recall.

24 Q: One instance in all your years as an
25 investigator?

□

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1 A: All my years as an investigator -- I can
2 recall one instance. There may have been more, but
3 specifically I can recall one instance where there was no
4 DNA evidence.

5 Q: And you looked for the DNA evidence?

6 A: Absolutely.

7 Q: And why did you look for the DNA evidence?

8 A: Wait a second. Let me -- standard -- trying
9 to think about the incident.

10 I could be misremembering the incident. My
11 recollection is there was no DNA evidence to connect to a
12 suspect in one of my cases.

13 Q: Okay. And was the assailant ultimately found
14 guilty?

15 A: He was never identified.

16 Q: Oh, okay. Because without the DNA, you
17 didn't know who had done it.

18 A: No, I didn't -- she didn't know who he was,
19 and I was unable to identify him, so.

20 Q: All right. But you would agree DNA in a rape
21 case is critical evidence?

22 A: I would agree DNA in a rape case is helpful
23 evidence.

24 MR. THOMPSON: Mr. Sun, with your
25 permission, I would like to take a five-minute break. I

□

80

1 think I may be done, but I just want review my notes.

2 MR. SUN: That would be fine, thank you.

3 MR. THOMPSON: I appreciate that.

4 [RECESS - 11:50 A.M. TO 11:55 A.M.]

5 BY MR. THOMPSON:

6 Q: Let's go ahead and mark one last thing as 7.

7 [SMITH EXHIBIT NO. 7 WAS MARKED FOR
8 IDENTIFICATION]

9 BY MR. THOMPSON:

10 Q: So, sir, this is another e-mail from you to
11 Mr. Gettliffe, March 30, 2006. It says at the bottom of
12 the second page, "See attached file, Lacrosse Duke IDs
13 doc." Do you know what that attachment is?

14 A: It was a word document.

15 Q: And what was in that word document?

16 A: Exactly what -- here.

17 Q: Okay, I see. And do you know why it's
18 formatted slightly differently than Smith 6?

19 A: I don't know. I have not a clue.

20 Q: Okay. And I'm not sure either. It may be
21 just a printer because they're at the same time.

22 A: Well, again, I don't have a clue as to why
23 they look different.

24 MR. THOMPSON: Okay. Very good. Well,
25 sir, I have no further questions at this time. I would

□

81

1 note that we and Duke University are in a continuing
2 dialogue about the sufficiency of the document
3 production. We also don't have any documents that will
4 be subject to the protective order, so we reserve the
5 right to hold the deposition open, but I have no further
6 questions today.

7 THE WITNESS: Okay.

8 MR. THOMPSON: Thank you, sir.

9 MR. SUN: Bob and Stefanie, if it's okay
10 with you, I will wait until you examine Mr. Smith before
11 I consider whether to ask him any questions.

12 Let's go off the record.

13 [NOON RECESS - 11:57 A.M. TO 1:02 P.M.]

14 MR. EKSTRAND: We're back on the record.
15 Everybody here?

16 CROSS EXAMINATION

17 BY MR. EKSTRAND:

18 Q: Sergeant Smith, how are you?

19 A: I'm okay.
20 Q: Better days?
21 A: I'm okay.
22 Q: Good. All right. We're going to touch on a
23 couple of things you just talked about and just not get
24 into them beyond what I'd like just to add to.
25 when was it -- when did you call Ratliff

□

82

1 [sic]? You called him twice?
2 A: who? Gettliffe?
3 Q: Gettliffe. I'm sorry. When did you call
4 him?
5 A: when did I call him?
6 Q: Yeah.
7 A: I don't remember the exact date. If it's on
8 one of the --
9 Q: well, you called him to get the key card
10 report the first time, right?
11 A: Right. And that would have been on the 30th.
12 Q: Okay. So the second time you called him, was
13 it kind of around the time you sent the e-mail to
14 Gottlieb?
15 A: Probably.
16 Q: Okay. That was about two weeks later, give
17 or take?
18 A: Yes. Something like that. I don't know
19 exactly.
20 Q: Okay. All right. But you think that's about
21 when you would have called him the second time?

22 A: Something like that.

23 Q: All right. I'm going to hand to you what I
24 have now marked -- and if the court reporter would be so
25 kind.

□

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1 [SMITH EXHIBIT NO. 8 WAS MARKED FOR
2 IDENTIFICATION]

3 Q: That's marked as Smith 8.

4 All right. Smith 8 is an e-mail dated April
5 26, 2006, from Robert Dean to Leila Humphries, Phyllis
6 Cooper, Sarah Minnis, James Schwab, and Sara-Jane Raines
7 with a copy to Aaron Graves. That kind of looks like the
8 whole chain of command, right?

9 A: Yeah, more or less.

10 Q: Or the upper half of it. These are all your
11 supervisors, aren't they?

12 A: They were all people that were higher ranked
13 than me, yeah.

14 Q: Okay. The subject line of the e-mail reads,
15 "Those seeking information pertaining to the lacrosse
16 case." Is that right?

17 A: Yes.

18 Q: Okay. I'll just read it into the record. It
19 says, "In an effort to keep records on who is
20 seeking/being provided information pertaining to the
21 lacrosse case, please advise the seeker that you will get
22 back with them about their request. Then notify me,"
23 that's Dean, "and I will notify our legal counsel, Kate
24 Hendricks, about the request prior to releasing."

25

All right. And it says, "The purpose for

□

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1 this is to ensure that we do not violate anyone's privacy
2 rights."

3 Okay. Now, do you remember seeing this
4 e-mail?

5 A: Yes.

6 Q: You do?

7 A: Yeah, kind of.

8 Q: Okay. Tell me about your recollection.

9 A: Other than vaguely, that's it.

10 Q: Okay. Do you remember seeing it around the
11 time it was sent, April 26, 2006?

12 A: Yes.

13 Q: Okay. Seems like there's a lot of higher-ups
14 involved here. Is that right?

15 A: All I know is here is the e-mail.

16 Q: Okay. Is the genesis of this your disclosure
17 of the lacrosse players' key card data?

18 A: I don't -- unfortunately, I am very uncertain
19 about times and dates with this other than if I see it on
20 an e-mail, so I'm not sure what the genesis of this was.
21 Robert Dean wrote it, not me.

22 Q: Was there an understanding in the department
23 that you had disclosed these records earlier than April
24 26th?

25 MR. SUN: Objection.

□

1 THE WITNESS: Repeat the question,
2 please.

3 BY MR. EKSTRAND:

4 Q: Let me rephrase it.

5 Do you recall anything that suggested that
6 all these higher-ups were aware of your prior disclosure
7 without a court order or subpoena of the lacrosse
8 players' private records?

9 MR. SUN: Objection.

10 THE WITNESS: would you repeat the
11 question, please.

12 BY MR. EKSTRAND:

13 Q: Were you aware of anything that suggested
14 that all these higher-ups were aware that you had
15 disclosed the lacrosse team members' private data without
16 a subpoena or court order?

17 MR. SUN: Objection.

18 THE WITNESS: Okay. There was a point
19 where I told the Duke administration that I had -- or I
20 admitted that I had released the card reader information.

21 BY MR. EKSTRAND:

22 Q: Okay. when was that?

23 A: I don't remember the date. That's the
24 problem, I don't remember the date. And what I would say
25 is that prior to that, I had no knowledge that anyone

□

1 knew about it but me, Greg Stotsenberg and Gottlieb.

2 Q: Are you confident --
3 A: On my end -- on my side, all I know, the only
4 people I knew that knew about it was me, Greg
5 Stotsenberg --
6 Q: For a time, right?
7 A: Huh?
8 Q: For a time?
9 A: Until I admitted -- well, Greg Stotsenberg
10 and Roland Gettliffe.
11 Q: So you three admitted it?
12 A: No, no. Those are the three that knew prior
13 to my admission.
14 Q: Okay. And you don't know when you made the
15 admission, but was your admission before this e-mail went
16 out, April 26, 2006?
17 A: I want to say it is, but I'm not sure of the
18 date.
19 Q: Okay. Was it around that time?
20 A: I'm not sure of the date.
21 Q: I understand.
22 A: I'm trying to refresh my memory.
23 Q: Do you know roughly how long it was that --
24 A: It may have been after -- it may have been --
25 actually, looking at the date, it was probably -- my

□

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1 admission was probably after this e-mail came out.
2 Q: Okay. Can you say how many weeks after?
3 A: No.
4 Q: Was it several months or several days,

5 several weeks?

6 A: It might have been a month or two. I don't
7 recall.

8 Q: All right. Who did you confess to?

9 A: I was questioned by Paul Stirrup.

10 Q: And he is?

11 A: He was an auditor with the -- he was an
12 employee of Duke internal audit. He questioned me about
13 it. I answered the question.

14 Q: Okay. What is the internal audit?

15 A: It's a department within Duke that audits
16 finances within the university.

17 Q: Finances?

18 A: Yeah.

19 Q: What was he doing walking around your shop
20 for?

21 A: My understanding is he was working for the
22 Duke -- doing some work for the Duke counsel's office at
23 the time.

24 Q: Does he have any background in
25 investigations?

□

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1 A: Yes. He's a former FBI agent.

2 Q: Okay. And counsel's office sent him over to
3 investigate you?

4 A: No. He had a question for me, and he came
5 over to ask the question.

6 Q: And what was his question exactly?

7 A: About whether there was an entry in Mark

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8 Gottlieb's case notes about me giving a document to him,
9 and he had questions about that document, whether I had
10 indeed released that document or a document and what
11 document I had released, and I told him.

12 Q: Okay. All right. Did you tell him that
13 Officer Stotsenberg knew and --

14 A: Officer Stotsenberg was in the meeting.

15 Q: Okay. And did you tell him also that Sir
16 Gettliffe knew?

17 A: No. It would be Roland Gettliffe.

18 Q: Do you recall if that was before graduation?
19 Were students still there?

20 MR. SUN: Objection.

21 THE WITNESS: I do not recall.

22 BY MR. EKSTRAND:

23 Q: Okay. Are you aware of any report that was
24 produced as a result of that inquiry with you?

25 A: No.

□

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1 Q: Okay. All right. Is there anything else
2 about your disclosure of the records of the lacrosse team
3 members that you haven't told us that you recall?

4 A: Not that I can think of.

5 Q: All right. Okay. Let me kind of go back a
6 little bit over some of the more preliminary things.

7 what's your birth date?

8 A: My birth date?

9 Q: Uh-huh.

10 A: October 4, 1960.

11 Q: Okay. All right. And where are you from?
12 what's your hometown?
13 A: Durham.
14 Q: All your life?
15 A: Unfortunately, yeah.
16 Q: where is your family now?
17 A: what part of my family?
18 Q: Are they all here or are they --
19 A: Most of my family is in this area; if not
20 Durham, in the Triangle.
21 Q: Okay. Do you know anybody in Kansas, who
22 lives in Kansas?
23 A: Actually, yeah.
24 Q: who do you know?
25 A: Bill Rehm.

□

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1 Q: How do you spell that?
2 A: R-e-h-m.
3 Q: who is he?
4 A: A friend.
5 Q: All right. And how do you know him?
6 A: I knew him from Durham Tech.
7 Q: Okay. Do you keep in touch with him at all?
8 A: Hardly any now. Once a year, maybe.
9 Q: were you in touch with him all during the
10 time of the investigation?
11 A: I don't recall.
12 Q: You don't recall?
13 A: No. I speak to him maybe once a year.

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- 14 Q: what does he do?
- 15 A: He's in -- what was the company Ross Perot
16 owned? He's in IT.
- 17 Q: Okay. Tech guy. what does he do?
- 18 A: Now mostly I think administrative.
- 19 Q: So he's administrative -- you were done
20 answering the question?
- 21 A: Okay. You were about to say something,
22 though.
- 23 Q: what does he do with IT? In communications?
24 Computers?
- 25 A: Initially, he started with them in tech

□

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- 1 support.
- 2 Q: Could you say that again?
- 3 A: Tech support. Computer tech, computer
4 support.
- 5 Q: Okay. All right. Do you know what he was
6 doing around the time of the investigation?
- 7 A: He was still working for the same company. I
8 don't know exactly what he was doing.
- 9 Q: All right. Did he ever express any interest
10 in the case?
- 11 A: I don't recall that we ever spoke of it.
- 12 Q: Do you recall ever asking him to do you a
13 favor of any kind with respect to the case?
- 14 A: No.
- 15 Q: Do you know where in Kansas he lives?
- 16 A: Now he lives in Lawrence, Kansas. At the

17 time of 2006, he lived in Tulsa.

18 Q: Tulsa?

19 A: Oklahoma, yeah.

20 Q: Okay. All right. Do you have a badge
21 number?

22 A: Thirty-six.

23 Q: Thirty-six. Do you have any ID number that's
24 associated with your employment at Duke?

25 A: My Duke unique ID number is 24500.

□

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1 Q: Do you ride in the same car, or do you ride
2 in a patrol car, or do you just take whatever is in the
3 lot?

4 A: Now?

5 Q: Now -- then.

6 A: Pretty much the same car.

7 Q: Okay. And that's true in 2006?

8 A: In 2006, I didn't have a patrol car.

9 Q: Are you married?

10 A: Yes.

11 Q: Okay. And you live in Durham?

12 A: Yes.

13 Q: Let me ask you about -- I know you've talked
14 about investigation experience or that you've had some --
15 you've worked for Duke all your life almost, all your
16 career just about --

17 A: For a while.

18 MR. SUN: Let him finish the question.

19 THE WITNESS: All right.

20 BY MR. EKSTRAND:

21 Q: Tell me about the training -- actually,
22 scratch that.

23 Tell me about your experience with sexual
24 assault investigations.

25 A: I've been involved assisting in a couple and

□

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1 being lead on several.

2 Q: Okay. And in your experience as an
3 investigator, have you had any experience with DNA
4 evidence? Actually -- and I'm asking as of 2006 when the
5 investigation of Crystal Mangum's allegation occurred.

6 A: I'm sure there was DNA evidence in some of
7 the sexual assault investigations. I don't specifically
8 remember.

9 Q: Okay. Do you have any training in DNA
10 evidence?

11 A: No.

12 Q: Okay. Do you have any specialized training
13 in sexual assault examinations?

14 A: No.

15 Q: Do you have any training in the handling of
16 evidence collected during a sexual assault examination?

17 A: In general, I've taken -- I've had training
18 in some sexual assault classes, formal training in the
19 collection of evidence. Other than what we were given in
20 basic law enforcement training, I don't recall any.

21 Q: Okay. Where did you do your basic law
22 enforcement training?

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23 A: It was through Durham Tech. Durham Technical
24 Community College sponsored it.
25 Q: That's what you remember?

□

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1 A: Well, Durham Technical Community College
2 sponsored it. It was conducted through the Durham County
3 Sheriff's Department, the Orange County Sheriff's
4 Department, and the Wake County Sheriff's Department.
5 Q: Okay. Any other training you have in
6 criminal investigations?
7 A: I obtained my criminal investigations
8 certificate through the North Carolina Justice Academy.
9 Q: Okay. When did you obtain that?
10 A: A couple of years back. No, actually, wait a
11 second. This is 2011. 2007 and 2008. I don't recall
12 the exact date. Sometime after I left investigations.
13 [SMITH EXHIBIT NO. 9 WAS MARKED FOR
14 IDENTIFICATION]
15 Q: Fair enough. I'm handing you what's been
16 premarked as Smith 9.
17 A: Okay.
18 Q: If you could, turn to the Bates -- it's page
19 number 2 on the document, but the Bates number is 12804.
20 A: Yes.
21 Q: Okay. It says -- you are highlighted there
22 as Detective Gary Smith, and that's your --
23 A: That's me.
24 Q: That's showing you received the prestigious
25 Criminal Investigator's Certificate, and I quote.

□

1 A: Well, I received the Criminal Investigator's
2 Certificate.

3 Q: Okay. And that involved 400 hours of
4 training in legal and investigative topics?

5 A: Yes.

6 Q: Okay. And that was in May of 2006, right?

7 A: I completed it in May of 2006, yes.

8 Q: Okay. All right. So is that what you were
9 referring to just a moment ago?

10 A: Yes.

11 Q: So do you recall what you were trained in, in
12 those 400 hours?

13 A: There were numerous courses. I do not
14 remember the specific courses. I can tell you some, but
15 I can't remember them all.

16 Q: Okay. All right. Was any of that highly
17 specialized? For example, any of the things we've talked
18 about, DNA evidence, sexual assault --

19 A: There was two class- --

20 MR. SUN: Hang on, let him finish.

21 THE WITNESS: Okay, I'm sorry.

22 BY MR. EKSTRAND:

23 Q: Those are just examples: DNA, sexual
24 assault, identifications?

25 A: DNA, sexual assault, and identification?

□

1 Q: Uh-huh.

2 A: There were two classes surveyed. I'll have
3 to say they were survey classes on sexual assault on
4 identifying the victim and dealing with -- no,
5 identifying the suspect and dealing with the victim.

6 Q: All right.

7 A: There may have been more. I don't recall.

8 Q: All right. And who provided that 400 hours
9 of training?

10 A: Most of it was through the North Carolina
11 Justice Academy.

12 Q: Okay. All right. Now, does Duke Police
13 Department have a set of standard operating procedures?

14 A: Yes.

15 Q: And how are those maintained? Where are they
16 kept?

17 A: Right now, they're kept online, and I'm sure
18 there are paper copies somewhere.

19 Q: Do you have training in those SOPs?

20 A: We're issued the SOPs and required to read
21 them. I'm sorry -- we're issued the SOPs and required to
22 read them and now acknowledge in writing that we received
23 them.

24 Q: Okay. Do you know where the hard copy or the
25 original -- the source copy is?

□

1 MR. SUN: Objection.

2 BY MR. EKSTRAND:

3 Q: You say they're online?

4 A: Yes.

5 Q: All right. Forgive me if I ask you this
6 again.

7 Did you have any specialized training in
8 investigation of sexual assault?

9 A: Other than the two classes, I'm -- if I
10 did -- and I don't say I didn't, but if I did, I don't
11 recall.

12 Q: Okay. All right. Were you aware of the
13 experience level of Detective Himan when he was
14 designated investigator on the case?

15 A: When he was designated investigator, no.

16 Q: And do you know how much experience Sergeant
17 Gottlieb had when he was an investigator on the case?

18 A: No.

19 Q: How familiar are you with the Durham Police
20 Department's structure allocation of responsibilities?

21 A: Very general.

22 Q: Are you aware that it has a criminal
23 investigations division?

24 A: Yes.

25 Q: All right. And it has patrol divisions,

□

1 right?

2 A: Yes.

3 Q: And this case was being investigated by two
4 people in the patrol division, right?

5 A: My understanding is that Gottlieb and Himan
6 were investigators assigned to a specific district.

7 Q: Patrol district, right?

8 A: Yes. But they were investigators assigned to
9 a specific -- a specific district.

10 Q: Okay. Were either one of them in the violent
11 crimes unit?

12 A: I don't know if they had been or hadn't been.

13 Q: Okay. Did you ever wonder?

14 A: No.

15 Q: Did it ever occur to you that maybe the
16 investigation wasn't going too well?

17 A: No.

18 Q: Didn't?

19 A: No.

20 Q: You thought it was going well?

21 A: I didn't have an opinion as to how it was
22 going.

23 Q: None at all?

24 A: Once the investigation was ongoing, I didn't
25 really have a reason to have -- it wasn't my

□

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1 investigation.

2 Q: Well, you just testified you were the lead
3 investigator.

4 A: No. I was the lead investigator in Duke's
5 investigation unit. I was not investigating it.

6 Q: I didn't say you were. You said you didn't
7 have a reason to be --

8 A: I wasn't -- it wasn't my case. I wasn't
9 investigating it.

10 Q: Okay.

11 MR. SUN: Wait for a question.

12 THE WITNESS: Okay.

13 BY MR. EKSTRAND:

14 Q: Let me hand you what's been -- going to be
15 marked as Exhibit 10, Smith 10.

16 [SMITH EXHIBIT NO. 10 WAS MARKED FOR
17 IDENTIFICATION]

18 Q: Have you ever seen this before?

19 A: I don't recall seeing it.

20 Q: Okay. Let me just read it into the record.
21 It says -- and stop me if you think I'm wrong. It says,
22 "James, Investigator Gary Smith called me wanting to know
23 about rape on Buchanan. Says Duke students live there
24 and he can give you names. Call him. 684-6424."

25 A: Okay.

□

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1 Q: All right. Does that refresh your
2 recollection about your involvement in the investigation?

3 A: I provided Durham with information. I was
4 not investigating the rape.

5 Q: Let me hand you what we're going to mark as
6 Exhibit 11.

7 [SMITH EXHIBIT NO. 11 WAS MARKED FOR
8 IDENTIFICATION]

9 Q: Now, that's just a handwritten page. I
10 believe the address at the top is the home address for
11 Crystal Mangum. But it says, "1020, Gary Smith provide
12 info sheets." And, "1024, Investigator Smith requested

13 Sergeant Tiffin run Duke Pistol on all three." And then
14 it says, "David Evans, no record. Matthew Zash," and
15 then nothing.

16 You don't happen to know who wrote this, do
17 you?

18 MR. SUN: Objection.

19 THE WITNESS: No, I don't.

20 BY MR. EKSTRAND:

21 Q: Okay. You talked about the info sheets. Is
22 there any other info sheets that that could be referring
23 to besides the players' Duke card data?

24 A: No. I -- I'd have to guess right now. I
25 don't recall, so -- I don't recall.

□

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1 Q: All right. What is a Duke Pistol?

2 A: It's a program for us to look at. It's the
3 online program we use to access our incident reports, or
4 our reports.

5 Q: Okay. That's the Duke Police Department?

6 A: Yes, the Duke Police Department.

7 Q: Okay. All right. And why did you request
8 that Sergeant Tiffin do that?

9 MR. SUN: Objection.

10 THE WITNESS: Well, I don't remember
11 making the request. I'm not saying I didn't; I just
12 don't remember, so --

13 BY MR. EKSTRAND:

14 Q: Okay. All right. Let me ask you something.
15 So you're an investigator. How important are notes to

16 you?

17 MR. SUN: Objection.

18 THE WITNESS: I keep notes on my
19 investigations.

20 BY MR. EKSTRAND:

21 Q: You keep notes on your activities as a police
22 officer of the Durham -- Duke Police Department?

23 A: Not everything.

24 Q: All right. Did you keep notes as the Duke
25 lead investigator on this case?

□

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1 MR. SUN: Objection.

2 THE WITNESS: I was not the Duke lead
3 investigator on this case. And I may have kept some --
4 some things I may have noted, other things I didn't.

5 BY MR. EKSTRAND:

6 Q: Okay. Where did you note them?

7 A: Anything I -- various places.

8 Q: Various places?

9 A: I don't really use a notebook; I use a legal
10 pad. If I had a report, I might make notes directly on
11 the report.

12 Q: What do you do with your notes wherever you
13 happen to put them to keep track of them?

14 A: Mostly a legal pad. Usually, if I've got a
15 case, my notes go directly -- everything that's in my
16 notes goes directly in the report. Sometimes I would
17 keep them with the report; sometimes I wouldn't.

18 Q: Okay. Regardless of whether you incorporate
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19 some or all of your handwritten notes in a report, what
20 do you do with the handwritten notes?

21 A: Sometimes -- well, if I didn't attach them to
22 a report, I probably dispose of them.

23 Q: what do you mean dispose of them?

24 A: Throw them away.

25 Q: where?

□

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1 A: Trash can.

2 Q: Is that in your SOPs?

3 A: I don't know that -- I don't recall if it's
4 in our SOPs.

5 Q: You've read them, right?

6 A: Yes. And if there's something there, I've
7 probably read it. Right now, I don't remember it.

8 Q: You don't know what the standard operating
9 procedure is for maintenance of notes?

10 A: If I have a question about a standard
11 operating procedure, I go to the standard operating
12 procedure and read it.

13 Q: Okay. But you don't know what the standard
14 operating procedure is today, sitting in front of me --

15 A: I'm not --

16 Q: -- about your handwritten notes?

17 MR. SUN: wait for a question, please.

18 THE REPORTER: And was there an answer?

19 MR. SUN: why don't you read it back to
20 him.

21 [QUESTION READ AS REQUESTED]

22 BY MR. EKSTRAND:

23 Q: with respect to your handwritten notes.

24 A: Honestly, I'm not sure there is a standard
25 operating procedure regarding our notes.

□

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1 Q: Okay. Do you know if you threw away your
2 notes in connection with your activities relating to this
3 case?

4 A: I have some documents related to this case
5 that I kept.

6 Q: where are they?

7 A: I have turned them over to the counsel's
8 office.

9 Q: Okay. The question was, do you know if you
10 threw away notes of your activities in connection with
11 this case?

12 A: I disposed of notes in regard to lots of
13 cases, probably this as well.

14 Q: Do you remember which notes?

15 A: No.

16 Q: Okay. All right. I'm going to hand you what
17 will be marked as Smith 12.

18 [SMITH EXHIBIT NO. 12 WAS MARKED FOR
19 IDENTIFICATION]

20 Q: The first thing I want to ask you about this
21 document, it's entitled an "Operations Report DUPD." Is
22 that the Duke University Police Department?

23 A: Yes.

24 Q: Now, on top, it says, "CC: Smith file." Is
Page 94

25 that you?

□

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1 A: Yes.

2 Q: Okay. what file is that referring to?

3 A: well, "CC: Smith" means for purposes of case
4 management, I assigned it to me. "File" means the report
5 was simply filed. There was no follow-up on it.

6 Q: Okay. Now, this is an operations report
7 dated March 16, 2006, right?

8 A: Yes.

9 Q: It says the case number is 2006-1304, right?

10 A: Yes.

11 Q: what does that case number designate?

12 A: It's simply -- it's a -- it doesn't designate
13 anything except it's the number of the report.

14 Q: It's the number of the report, not the case?

15 A: well, if there's any follow-up on the case,
16 that follow-up would be documented with the same case
17 number.

18 Q: Okay. Let me just -- this is a report of the
19 search of 610 North Buchanan, right?

20 A: That's what it appears to be.

21 Q: Okay. All right. So the case number at the
22 top refers to just the search and not the underlying
23 report of an assault at 610 North Buchanan?

24 A: Just a report, and therefore, I guess, the
25 case number refers to the service of the search warrant

□

1 at 610 Buchanan.

2 Q: Okay. All right. Let me back up. I wanted
3 to ask you about where you kept your notes to make sure
4 that we understand this. I don't know if you answered
5 where you kept the notes that you retained. Do you keep
6 them at home? At the office?

7 A: No, at the office.

8 Q: Where in the office?

9 A: In a file cabinet.

10 Q: Okay. Do you have a file designated for
11 this, for Crystal Mangum's allegations and activities
12 related to the investigation of them?

13 A: I had a file folder where I kept some
14 documents and notes in reference to the incident at 610
15 Buchanan.

16 Q: Okay. Do you still have it?

17 A: I no longer have the folder.

18 Q: Okay. What happened to it?

19 A: I turned it over to my attorneys.

20 Q: Okay. Counsel's office?

21 A: Counsel's office.

22 Q: Okay. All right. When did you do that?

23 A: When did I do that?

24 Q: Uh-huh.

25 A: Initially, I provided them copies of the

□

1 contents within the last three months. I provided them

2 with the originals.

3 Q: Okay. So you provided them copies when?

4 A: Probably late 2006, early 2007.

5 Q: Okay. All right. And when you say
6 "counsel's office," who in counsel's office did you give
7 them to?

8 A: I walked in -- I don't recall if I delivered
9 them to the front desk or to Kate Hendricks, the copies.

10 Q: Okay. Is it fair to say you were essentially
11 delivering them to Kate Hendricks?

12 A: The copies, I delivered to Kate Hendricks.

13 Q: And then you were asked for originals
14 recently?

15 A: Yes.

16 Q: And do you have all the originals of the
17 copies you had originally given?

18 A: They're -- everything I provided copies of to
19 counsel's office was in the folder.

20 Q: All right. What were you going to say?

21 A: The only additional thing that was in the
22 folder was probably a -- probably a letter reference Mike
23 Nifong's bankruptcy.

24 Q: Okay. Do you know if you preserved your
25 notes relating to the original acquisition of the key

□

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1 card data?

2 MR. SUN: Objection.

3 THE WITNESS: Excuse me?

4 BY MR. EKSTRAND:

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6 Q: Did you preserve your notes of your original
7 acquisition of the key card data?

8 MR. SUN: Objection.

9 You can answer.

10 THE WITNESS: Okay. I didn't have any
11 notes in regard to the -- that I recall in regard to the
12 key card data.

13 BY MR. EKSTRAND:

14 Q: All right. If we wanted to get any of your
15 notes, we'd just contact your lawyers and they have them?

16 A: If anything I've got regarding any of this,
17 my attorneys already have it.

18 Q: All right. I will hand you now what I am
19 marking Smith 13.

20 [SMITH EXHIBIT NO. 13 WAS MARKED FOR
21 IDENTIFICATION]

22 Q: This is another Duke University Police
23 Department operations report, right?

24 A: Yes.

25 Q: And the date is March 14, 2006, at 3:08 a.m.?

 A: Yes.

□

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1 Q: All right. And who prepared this report?

2 A: It appears to have been written by
3 Christopher Day.

4 Q: All right. And the alleged victim in the
5 report?

6 A: Is Crystal Mangum.

7 Q: Now, let's just go through this narrative

8 really quickly.

9 It says, "On the above date and time, a
10 female was brought into the emergency department by Duke
11 [sic] Police in reference to a possible rape."

12 MR. SUN: Durham Police.

13 MR. EKSTRAND: Did I say Duke? Durham
14 police.

15 BY MR. EKSTRAND:

16 Q: "A female was picked up at the Kroger on
17 Hillsborough Road, and she was claiming that she was
18 raped by approximately 20 white males at 610 North
19 Buchanan."

20 Do you remember that claim?

21 A: I remember this report.

22 Q: Do you remember the claim in it?

23 A: I -- honestly, this is the first time I've
24 read this report in -- well, no. Let me see. I don't
25 recall that. This is refreshing my memory somewhat.

□

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1 Q: whose name is that at the top?

2 A: That's my name.

3 Q: Smith. That's you?

4 A: Yes.

5 Q: why is your name up there?

6 A: Because I -- in case management. I case-
7 managed it and gave it to me.

8 Q: You were the lead investigator.

9 A: I was an investigator. I was the lead
10 investigator for Duke investigations.

11 Q: And this was a Duke University Police
12 Department report?

13 A: This is an operations report, yes.

14 Q: It went to you?

15 A: It went to me.

16 Q: About the same time it was submitted, right?

17 A: The day after, probably.

18 Q: All right. So the day after, you knew that
19 the claim was 20 white men at 610 North Buchanan Street
20 raped Crystal Mangum, according to her, right?

21 A: According to her.

22 Q: And let me ask you, Sergeant Gettliffe asked
23 you to run a Pistol on three residents of the house. Did
24 you ask him, "Aren't you looking for 20 guys"?

25 MR. SUN: Objection.

□

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1 THE WITNESS: Repeat the question,
2 please.

3 BY MR. EKSTRAND:

4 Q: When Sergeant Gettliffe came to you and you
5 said it was either the 14th, 15th, or 16th in your
6 testimony earlier today, he came to you and asked you for
7 photographs and key card data and ask you to run a Pistol
8 or you asked somebody to run a Pistol on the three
9 residents. Did you think that that was odd in light of
10 the fact that she was claiming that she was raped by 20
11 men?

12 MR. SUN: Objection.

13 THE WITNESS: I can't say that even

14 occurred to me.

15 BY MR. EKSTRAND:

16 Q: Okay. Well, what about here at the bottom,
17 it says, "The victim changed her story several times, and
18 eventually the Durham police stated that the charges
19 would not exceed misdemeanor simple assault against the
20 occupants of 610 North Buchanan. There were no charges
21 filed by Duke police officers. No suspects have been
22 identified."

23 Misdemeanors. Have you read that report?

24 A: I've read that report.

25 Q: And when a Durham police officer named

□

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1 Gottlieb came to you and said, "I want all this stuff
2 about all the members of the team," did you say, "My
3 gosh, this is a big investigation for a misdemeanor"?

4 A: That's not what I said.

5 Q: Okay. Did you ask him about what's changed?

6 A: I don't think this came up in our
7 conversation.

8 Q: You didn't mention it?

9 A: I don't recall mentioning it to him. I don't
10 recall mentioning the accusation that she was raped by 20
11 white males or that someone at the scene had told
12 Christopher Day that charges probably would not exceed
13 misdemeanors.

14 Q: All right. Now, the middle paragraph
15 identifies a number of police officers. There's
16 Mazurek --

17 A: Mazurek.
18 Q: -- Eason --
19 A: Yes.
20 Q: Robertson --
21 A: Yes.
22 Q: -- and Day?
23 A: Yes.
24 Q: Those are all Duke police officers, right?
25 A: Yes.

□

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1 Q: Okay. It says here that, "Mazurek contacted
2 Lieutenant Best in reference to the victim. Lieutenant
3 Best stayed at the emergency department to gather
4 information from the victim and -- with Durham police."
5 Do you know anything about that personally?
6 A: No.
7 Q: Okay. Then it says, "Eason, Robertson, and
8 Day went to 610 North Buchanan to follow up and see if we
9 could make contact with the occupants of the house,"
10 right?
11 A: That's the report says.
12 Q: Okay. So are they investigating?
13 A: I don't -- are they investigating? I think
14 they were going to the house to -- I don't know what they
15 were doing. They went to the house to make contact with
16 the occupants. That's all I know. That's what the
17 report says.
18 Q: why would they want to make contact with the
19 occupants?

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20 A: To, (a) identify them; to, I guess, make an
21 initial inquiry to determine if it was something that was
22 related to Duke or not. I don't know.

23 Q: Does it stand to reason that they're
24 investigating?

25 A: Huh?

□

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1 Q: Does it stand to reason that they are
2 investigating when they go to the house?

3 A: They may be making an initial investigation.

4 Q: Okay. All right. Let me ask you something.
5 Is it possible for the Durham and Duke Police Departments
6 to both participate in any one investigation?

7 A: It's possible.

8 Q: Okay. But you testified earlier that you
9 told Sergeant Gettliffe that Duke was not investigating
10 this particular allegation at some point, right?

11 A: Absolutely.

12 MR. SUN: Objection.

13 BY MR. EKSTRAND:

14 Q: Huh?

15 A: Yes, I did.

16 Q: Okay. All right. And that was your choice
17 or was that a departmental choice?

18 MR. SUN: Objection.

19 BY MR. EKSTRAND:

20 Q: Who made that decision?

21 MR. SUN: Objection.

22 THE WITNESS: I told Gottlieb that --

23 when asked by Gottlieb if we were taking the case, I told
24 him no. I also communicated that to Phyllis Cooper who
25 didn't disagree with me.

□

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1 BY MR. EKSTRAND:

2 Q: Okay. why didn't you take the case?

3 A: It was, in my opinion, not our jurisdiction.

4 Q: Okay. And is that the only basis of your
5 decision?

6 MR. SUN: Objection.

7 THE WITNESS: That it was not our
8 jurisdiction.

9 BY MR. EKSTRAND:

10 Q: But you know that it was a house owned by
11 Duke University, right?

12 A: It was -- at that point, I'm not sure that I
13 was aware -- well, no, prior to that, I'm not sure that I
14 was aware that it belonged to Duke University. In any
15 event, it was a property that we did not exercise direct
16 control over. It was a residential property handled, I
17 believe, through a property manager. I could be wrong
18 there, but through a property manager, so I didn't
19 consider it our jurisdiction, and it was off campus.

20 Q: So you don't investigate crimes that occur
21 off campus?

22 A: We will if the property is under the direct
23 control of Duke University.

24 Q: Okay. And where does that come from, the
25 direct control of the university? Is that in an SOP

□

1 somewhere?

2 MR. SUN: Objection.

3 THE WITNESS: I don't recall.

4 BY MR. EKSTRAND:

5 Q: You just made it up?

6 A: No, I didn't make it up. That's been my
7 practice for -- and the practice of the department, as I
8 understand it, for years.

9 Q: Let me hand you --

10 MR. SUN: Could we take a comfort break?

11 MR. EKSTRAND: I was going to tell
12 you -- yes, we can. I was going to say I think we may be
13 getting close to -- I want to keep it under an hour.

14 MR. SUN: Thank you.

15 MR. EKSTRAND: Yes, let's take a break.

16 [RECESS - 1:57 P.M. TO 2:09 P.M.]

17 BY MR. EKSTRAND:

18 Q: Now, I'm going to hand you, Officer Smith,
19 what I will mark as Smith 14.

20 [SMITH EXHIBIT NO. 14 WAS MARKED FOR
21 IDENTIFICATION]

22 Q: This is a Duke University Police Department
23 operations report, right?

24 A: Yes.

25 Q: And it is about four pages. And the date of

□

1 the report is April 1, 2006, right?

2 A: Uh-huh.

3 Q: All right. Now, it says here that the
4 location of the incident is the 700 block of North
5 Buchanan Boulevard in front of 704 North Buchanan
6 Boulevard, right?

7 A: Yes.

8 Q: Okay. And it appears that the Duke
9 University Police responded to this call, right?

10 A: Yes.

11 Q: And the nature of the incident was suspicious
12 activity with a traffic stop?

13 A: Yes.

14 Q: All right. Would it be fair to say that Duke
15 University Police investigated and closed this
16 investigation?

17 A: There's nothing -- Duke investigated it, and
18 it's marked as pending. I don't recall doing anything
19 with it, any follow-up on it.

20 Q: The last page is a citation issued to
21 Mr. Anderson?

22 A: Yes.

23 Q: Okay. And your name is at the top?

24 A: Yes.

25 Q: Does that mean that you were in charge of

□

1 this case?

2 A: It means that --

3 Q: Overseeing it?

4 A: Huh?

5 Q: Overseeing it?

6 A: Overseeing if there was any follow-up that
7 needed to be done, I would do it. But I don't recall
8 what follow-up I did, if any.

9 Q: Okay. And who is Ellerbe?

10 A: Ellerbe was a patrol officer with our
11 department.

12 Q: And who is Gustafson?

13 A: Gustafson was a lieutenant with our
14 department.

15 Q: Okay. All right. And if I could hand you
16 what I will mark as Smith 15.

17 [SMITH EXHIBIT NO. 15 WAS MARKED FOR
18 IDENTIFICATION]

19 Q: This is a breaking and entering of a motor
20 vehicle?

21 A: Uh-huh.

22 Q: Injury to personal property. And where is
23 the location of this incident?

24 A: 704 North Buchanan.

25 Q: Okay. And isn't it true that the Duke

□

1 University Police Department investigated and closed this
2 case?

3 A: They investigated it. I don't know how it
4 was closed.

5 Q: Was it referred -- any indication it was
6 referred to another police department?

7 A: No, I don't see any. But this is just the
8 initial report.

9 Q: At the bottom it says, "Case status,"
10 "Closed" is checked. Does that tell you anything?

11 A: Oh, okay, yes. Apparently it was closed.

12 Q: Okay. Closed by the Duke Police Department,
13 correct?

14 A: Yes.

15 Q: All right. And that's 704 North Buchanan
16 Boulevard?

17 A: Yes.

18 Q: All right. That's not on campus?

19 A: No, it's not.

20 Q: That's right next to 610 North Buchanan,
21 isn't it?

22 A: I don't know if it's right next door or down
23 the street.

24 Q: In fact, it's in a parking lot that this
25 occurred?

□

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1 A: I -- well, let me read it.

2 [WITNESS EXAMINES DOCUMENT]

3 A: So your question, it was there was a parking
4 area outside the building at 704 North Buchanan.

5 Q: It says "Incident Data," and it says
6 "Premises Type," and there the Duke Police Department
7 wrote "Parking lot/area."

8 A: That is what it was. Cars were apparently
9 parked in the parking lot; therefore, that was the

10 premises.

11 Q: Okay. So that's where the breaking and
12 entering allegedly occurred?

13 A: Yes.

14 Q: And the Duke University Police Department
15 investigated and closed this case?

16 A: Well, yes, it looks to -- appears to me that
17 they did. Had this report come in yesterday, it would
18 have been -- or after -- within the last three years, it
19 would have been referred to Durham. I don't know why it
20 wasn't in this case. I don't recall.

21 Q: Well, what is the date of this report? It's
22 September 29, 2006, right?

23 A: Yes.

24 Q: So that's several months after the alleged
25 incident at --

□

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1 A: I --

2 Q: -- 610 North Buchanan?

3 MR. SUN: Hold on. Let him finish the
4 question.

5 THE WITNESS: Okay.

6 Actually, there is our primary
7 jurisdiction with Duke and secondary jurisdiction. Right
8 now, and around the time of Duke lacrosse, things
9 immediately on Duke campus would be our primary
10 jurisdiction. Things that happened off campus at this
11 time were divided into what would be serious matters and
12 not-so-serious matters. Class 1, Class 2, Class -- I

13 keep getting the numbers confused, but the more serious
14 would be a homicide, burglary, sexual assaults, things of
15 that nature.

16 BY MR. EKSTRAND:

17 Q: Sexual offense?

18 A: Huh?

19 Q: Sexual offense?

20 A: Sexual offense.

21 Q: Second-degree sexual offense?

22 A: Any sexual offense.

23 Q: Kidnaping?

24 A: Kidnaping, serious felonies.

25 Q: Those would go there?

□

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1 A: Those would go to Durham. They had primary
2 jurisdiction in all of those. Other minor things that
3 they would have reported to us less serious, it was a
4 decision of the shift commander whether it was going to
5 get passed over or not. If there was a question in the
6 shift commander's mind, he would inquire of a staff
7 officer. So that is consistent with this.

8 Q: Okay. So primary, secondary jurisdiction,
9 where does that come from?

10 A: That comes from our mutual aid agreement with
11 Durham.

12 Q: That's what I thought. Okay.

13 All right. I'm going to hand you what we
14 have premarked as Smith 16.

15 [SMITH EXHIBIT NO. 16 WAS MARKED FOR
Page 110

16 IDENTIFICATION]

17 Q: This is another Duke University Police
18 Department investigation report?

19 A: Yes.

20 Q: And it is a report of an incident that's been
21 styled as second-degree sexual offense and kidnaping?

22 A: Yes.

23 Q: And the officer reporting this or preparing
24 this report appears to be Christopher Day, correct?

25 A: Yes.

□

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1 Q: And this alleged sexual offense and kidnaping
2 was investigated by Christopher Day and closed by
3 Christopher Day; isn't that true?

4 A: It says "Closed, leads exhausted."

5 Q: And the date of --

6 A: Oh --

7 Q: Go ahead.

8 A: These incident reports aren't -- these are
9 printouts that are printed out months, maybe, after the
10 date and whether -- frankly, in my mind, as far as case
11 status goes, when they're originally written, the status
12 may be different than what it is or what the status is
13 when you finally get a copy.

14 So I don't know what went into closing this
15 case, whether it was closed by Christopher Day or whether
16 it was assigned to an investigator, since there's no
17 notation on it, it's a printout, who it was assigned to
18 and what work they put into it before it was cleared.

19 That would remain true of this as well.

20 MR. SUN: When you say "this," go ahead
21 and identify the exhibit number.

22 THE WITNESS: "This" would be the other,
23 Exhibit Number 15 as well.

24 BY MR. EKSTRAND:

25 Q: So how would we know what else happened in

□

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1 connection with this sexual offense and kidnaping that
2 was closed?

3 A: There should be investigative follow-up and
4 their follow-ups.

5 Q: Their follow-ups?

6 A: The investigator will document what he did in
7 reference to this investigation.

8 Q: On the second page, it says on the above date
9 the sexual assault occurred, or she reported a sexual
10 assault at --

11 A: Right.

12 Q: -- at a laundry facility on Yearby Street?
13 Strike that.

14 It says on the above date and time, a female
15 student reported that she was sexually assaulted at the
16 2017 Yearby Street laundry facility, and there are no
17 suspects at this time.

18 A: That, it does.

19 Q: And it says it's closed. And the date of the
20 report is July 31, 2006?

21 A: Yes.

22 Q: Okay. Who is Copley, William C. Copley?
23 A: Copley, he's a sergeant. At this time he was
24 with B Squad.
25 Q: With the Duke University Police Department?

□

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1 A: Yes.
2 Q: And Christopher Day is, we know, a Duke
3 University police officer at this time, right?
4 A: Yes.
5 Q: Okay. Is there any indication that this was
6 referred to Durham?
7 A: It wouldn't have been referred to Durham. It
8 occurred on Duke campus.
9 Q: Okay. Yearby Street is Duke campus?
10 A: Central campus apartments.
11 [SMITH EXHIBIT NO. 17 WAS MARKED FOR
12 IDENTIFICATION]
13 Q: Okay. I'm going to hand you what we have
14 marked as Exhibit 17 and ask you if you can tell us what
15 that is.
16 A: Is this the mutual aid agreement?
17 Q: You tell me.
18 A: It appears to be the mutual aid agreement.
19 Q: Okay. Now, I want to direct you to page 2.
20 At the top of the page it says, "Agreement for Police
21 Cooperation, Mutual Aid, and Campus Law Enforcement
22 Agency Extended Jurisdiction."
23 A: Yes.
24 Q: Is this the agreement that governed the

25 jurisdictional relationship between Durham police and

□

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1 Duke police?

2 MR. SUN: Objection.

3 THE WITNESS: Repeat the question,
4 please.

5 BY MR. EKSTRAND:

6 Q: Is this the agreement that governed the
7 jurisdiction sharing between Duke police and Durham
8 police?

9 A: This is -- it appears to be.

10 Q: The definitions in this define "campus,"
11 which I believe you just referred to, it says, "Campus
12 shall mean all property owned and/or leased by the
13 university that is within the corporate limits of
14 Durham," right?

15 A: That's what it says.

16 Q: So is that your understanding of what
17 "campus" means when you say it happens on campus when the
18 police investigate?

19 A: That's what it says.

20 Q: Okay. This was -- if you look at the last
21 page, page 5 of 5, it was signed by President Keohane on
22 April 6, 2004. Is that right?

23 A: That is what it says.

24 [WHEREUPON, MR. THOMPSON AND MS. SPARKS LEAVE
25 THE PROCEEDINGS]

□

1 [SMITH EXHIBIT NO. 18 WAS MARKED FOR
2 IDENTIFICATION]
3 Q: I am going to show you now what we have
4 marked as Smith 18. Do you recognize this message slip?
5 A: No.
6 Q: Do you recognize the handwriting?
7 A: No.
8 Q: Okay. All right. It says, "To Soucie." Do
9 you know who that is?
10 A: Investigator with the Durham Police
11 Department.
12 Q: Who was involved in the investigation of the
13 allegations in this case?
14 A: Yes.
15 Q: It gives a login and a password. Are you
16 familiar with that?
17 A: This is the first time I've seen this.
18 Q: Okay. So when it -- the domain of the login
19 is mail.duke.edu. Is that right?
20 MR. SUN: Objection.
21 THE WITNESS: The message says, "Login,"
22 something I can't make out, "at mail.duke.edu."
23 BY MR. EKSTRAND:
24 Q: And then the password is test test.
25 A: If you say so.

□

1 Q: I think so. Is that familiar to you at all?

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2 A: No, it's not.

3 Q: All right. Indicates that there are pictures

4 of all the suspects. Is that familiar to you?

5 A: Excuse me?

6 Q: The direction to go to a page to find

7 pictures of all the suspects on Facebook?

8 A: None of this isn't familiar to me.

9 MR. SUN: Objection.

10 BY MR. EKSTRAND:

11 Q: All right. Okay. Are you familiar with the

12 joint command, Duke/Durham joint command?

13 A: Not as such.

14 Q: Do you know of anything --

15 A: It doesn't ring any bells.

16 [WHEREUPON, MS. SPARKS JOINS THE PROCEEDINGS]

17 Q: Were you aware of any meetings between Duke

18 University Police Department officials and Durham Police

19 Department officials about this investigations?

20 A: I only know about one.

21 Q: You wouldn't?

22 A: I only know about one.

23 Q: Oh. What was that?

24 A: My understanding from Gottlieb in a

25 conversation we had was that Dean and Graves had met with

□

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1 Gottlieb, and I think Chalmers was the chief at the time,

2 for Gottlieb to present to Aaron Graves and Robert Dean I

3 guess what they had on the case, was how it was explained

4 to me.

5 Q: Okay. Do you know when that occurred?

6 A: No, I don't know exactly when. It was
7 several weeks before the indictment. How far in advance
8 or how long after the incident, I don't recall.

9 Q: Does March 29th sound about right?

10 A: I honestly couldn't put a date on it.

11 Q: Okay. All right. And what did Sergeant
12 Gottlieb say to you about this meeting?

13 A: Other than that we -- other than that the --
14 I guess the case was discussed and Graves and Dean were
15 provided with what their case was, that they were both
16 informed -- but I don't know if it was either by Gottlieb
17 or the chief -- that they were not to discuss that
18 information outside of that meeting.

19 Q: Okay. So your understanding is that Gottlieb
20 and perhaps was Himan also there? Was Himan there?

21 A: I have no idea who was there beyond Gottlieb
22 and Graves, Dean, and Chalmers. If Gottlieb told me that
23 anybody else was there, I don't remember.

24 Q: Okay. But you're clear that he said that
25 Graves and Dean were present and briefed on the

□

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1 investigation to date?

2 A: I don't recall him characterizing it. My
3 sense was -- well, what I recall was they were told
4 what -- let me think of the best way to say this. My
5 sense and my recollection is that they were told what
6 evidence they had against the -- any of the Duke lacrosse
7 players and what -- whether they had a case or not.

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8 Beyond that, I don't have a clue.

9 Q: Okay. Are you aware of what Mr. Nifong said
10 about the quality of the evidence about that time?

11 A: I don't remember what I heard and what I
12 didn't hear on the news in regard to that.

13 Q: Do you recall any testimony at the disbarment
14 hearing where Himan indicated that Nifong told them that
15 they were F'd?

16 A: I didn't follow any of the news on the
17 disbarment hearings, thank you.

18 Q: You didn't hear that?

19 A: No. That, I would remember.

20 Q: Would you disagree with that assessment?

21 A: I don't know enough about the case to have an
22 opinion one way or the other, in truth.

23 Q: All right. You're aware that they took DNA
24 swabs of all the --

25 A: I am aware they took DNA.

□

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1 Q: -- members of the team?

2 MR. SUN: Let him finish his question.

3 THE WITNESS: I'm sorry. Go ahead and
4 finish your question.

5 BY MR. EKSTRAND:

6 Q: Are you aware that they took DNA swabs of all
7 the white members of the team?

8 A: Absolutely, yes, I'm aware of that.

9 Q: Okay. Did you become aware of the results of
10 those tests or tests conducted with those swabs?

11 A: No, I don't recall ever hearing what the
12 results were.

13 Q: Do you know today?

14 A: I've been told the results were negative.

15 Q: Okay. And in all of your training, what does
16 that indicate to you?

17 A: It indicates they damn well better have a lot
18 of other evidence.

19 Q: Were you aware of any other evidence?

20 A: I'm not aware of anything. I'm not aware
21 of -- I understand items were collected from 610 Buchanan
22 Street during their search warrant. Whether it provided
23 them with evidence to support their case or not, I don't
24 have a clue.

25 Q: All right. You're familiar with the

□

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1 allegations that were written in the affidavit, right,
2 the affidavit to support the NTID order?

3 A: The what who? No, I never read the
4 affidavit.

5 Q: Never did?

6 A: No.

7 Q: Are you aware of the nature of the rape
8 that's described in that affidavit?

9 A: I've never read the affidavit.

10 Q: Are you aware of the nature of the rape that
11 was alleged?

12 A: Only in very general terms that a rape was
13 alleged.

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- 14 Q: That it was in a small bathroom?
15 A: That sounds familiar.
16 Q: That it was about 30 minutes long?
17 A: I have no idea. I don't recollect the
18 length.
19 Q: Do you know what transference is?
20 A: It would -- as I understand the term, it
21 would be transference of material from one person to
22 another.
23 Q: Genetic material, right?
24 A: what?
25 Q: Could be genetic material, right?

□

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- 1 A: Could be genetic material. Could be a number
2 of things.
3 Q: And would it be safe to assume that if you
4 engaged in a 30-minute violent gang rape of a woman with
5 two other people, that one or all of you would leave a
6 skin cell behind that would be detected?
7 MR. SUN: Objection.
8 THE WITNESS: Please ask me the question
9 again.
10 BY MR. EKSTRAND:
11 Q: Do you think that transference would occur in
12 a violent, 30-minute gang rape of a woman by three men?
13 A: I think it might depend on multiple factors.
14 Q: Like what?
15 A: well, I've had cases where a young lady had
16 reported that she had been sexually assaulted, and we

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17 processed the scene, and there was no doubt in her mind
18 that there had been vaginal intercourse, but there was no
19 DNA or anything in her subject or a condom, and we didn't
20 find anything else when the scene was processed. No
21 other -- no other material, hair, anything.

22 Now, you would assume -- I could assume lots
23 of things. I'd rather not assume. I wasn't there. I
24 didn't do the investigation.

25 Q: Are you familiar with YSDR testing?

□

134

1 A: who?

2 Q: YSDR DNA testing?

3 A: No.

4 Q: Let me just ask you about that case you
5 mentioned. Was that a 30-minute violent gang rape?

6 A: I think that's what I said, it wasn't. It
7 was an acquaintance rape -- well, yeah.

8 Q: Okay. Now, back to this joint command. You
9 don't know of any other joint command meetings between
10 Duke and Durham police?

11 A: I don't know of any.

12 MR. SUN: Objection.

13 THE WITNESS: In reference to?

14 BY MR. EKSTRAND:

15 Q: Anything.

16 A: I'm sure they have meetings all the time. I
17 don't --

18 Q: Okay. Have you ever participated in a joint
19 command meeting?

Smith, Gary - Vol. 1 (2)
20 A: Not as such.
21 Q: Are you aware of whether Dean or Graves
22 reported on the meeting they had with the Duke
23 investigator or the Durham investigators in the joint
24 command meeting that you referred to?
25 MR. SUN: Objection.

□

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1 THE WITNESS: I don't know that it was a
2 joint command meeting. And, two, you would have to ask
3 them. I'm not aware of any.
4 BY MR. EKSTRAND:
5 Q: I understand. I'm asking you if you're aware
6 of any report that they gave/made about that meeting?
7 A: I'm not aware of any. If there were a
8 meeting or meetings, you'd have to ask them.
9 Q: well, no, I'm asking you.
10 A: I know.
11 Q: I think we're clear.
12 A: Yeah.
13 Q: we're clear.
14 Did anybody ask you what your thoughts were
15 about the state of the evidence?
16 A: when?
17 Q: At any time. Did anybody at Duke University
18 ask you --
19 A: Nobody -- I'm sorry. Finish your question.
20 Q: -- ask you what you thought your opinion was
21 of the evidence as it existed?
22 A: No, not that I recall.

23 Q: Okay. Did anybody in the Duke University
24 Police Department express their opinion to you about the
25 evidence in the case?

□

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1 A: If they did, I don't remember it.

2 Q: Do you know -- did you at the time know who
3 Crystal Mangum was at all?

4 A: At what time?

5 Q: At the time of her allegation when you
6 were --

7 A: I was unfamiliar with -- unfamiliar with her
8 prior to the allegations.

9 Q: Okay. That was the first you encountered her
10 as a person?

11 A: Yes.

12 Q: Okay. All right. Have you ever -- strike
13 that.

14 Are you familiar with the procedures relating
15 to an involuntary commitment?

16 A: Yes.

17 Q: Okay. Tell me about what you understand
18 those to mean.

19 A: They can be initiated through the
20 magistrate's office or by emergency committal. The
21 person either comes to or is brought to a location for an
22 evaluation by a psychiatrist, and the determination will
23 be made whether they are going to commit or not.

24 Papers are drawn out. I know them when I see
25 them, but I can't -- of the commitment papers. The

1 evaluation papers on the commitment papers come from the
2 magistrate. The doctor will fill out -- will fill out
3 forms. Those forms will be taken to a magistrate. The
4 person will be committed, transported to whatever
5 facility they're going to where a second evaluation then
6 takes place. And if the second evaluation agrees with
7 the first evaluation, then they're kept. That's my
8 understanding. That may not be exact.

9 [WHEREUPON, MS. SPARKS LEAVES THE
10 PROCEEDINGS]

11 Q: Okay. If it's an officer-initiated
12 involuntary commitment proceeding, what are the criteria
13 that you, as an officer, are looking for to determine
14 whether or not you should initiate them?

15 A: You know, whether the person is a danger to
16 themselves or others.

17 Q: Okay. And could you elaborate a little on
18 that?

19 A: It may -- it sounds very general whether
20 they're a danger to themselves or others, but that's
21 essentially their actions are such that you think they're
22 going to harm themselves or they're going to harm somebody
23 else.

24 Q: Okay. What if the cause of that is just
25 alcohol intoxication, they're just drunk, would that be a

1 basis for involuntary commitment?

2 A: I'm not a psychiatrist. My basis would be
3 looking at them and determining whether their actions
4 constitute a danger to themselves or others. Alcohol? I
5 don't know. Everything is situational. I can't really
6 comment.

7 Q: Okay. What are the kinds of things you do to
8 rule in or rule out that determination whether they're a
9 danger to themselves or others?

10 A: I'm not sure I've given it all that much
11 thought. I mean, I've been involved in quite a few,
12 but -- repeat your question one more time, please.

13 Q: That's good. I know it's a hard question,
14 and let me ask you a different way.

15 You said you've been involved in a few.
16 Could you illustrate what -- without naming anybody's
17 name, what you saw in the behavior of the person that
18 caused you to initiate those proceedings?

19 A: We've had on occasion people have made
20 comments to other people that they wanted to harm
21 themselves, and we'll go and we'll talk to the person.
22 They may or may not admit it, but based on what we see
23 and what the other person says, try to gather additional
24 information. You know, it could be their demeanor, it
25 could be -- there could be factors of whether they're --

□

1 whether they've consumed alcohol, whether they've
2 consumed other drugs, whether there's any sign that
3 they've tried to harm themselves, things of that nature.

4 Q: Okay. Let me ask you, are there standard
5 operating procedures for involuntary commitments within
6 Duke University --

7 A: You know, I don't remember. There may be. I
8 don't recall it at this time.

9 Q: Do you recall knowing at the time your
10 investigation started -- the investigation started, do
11 you recall knowing that Ms. Mangum had been presented for
12 an involuntary commitment?

13 A: I do not --

14 MR. SUN: Objection. I was just making
15 sure he was finished with the question.

16 THE WITNESS: I don't recall at the time
17 realizing or being told that she had been presented for
18 an involuntary commitment. I may have been told. I
19 don't remember it.

20 BY MR. EKSTRAND:

21 Q: All right. What is Durham Access?

22 A: It's a mental health facility.

23 Q: Okay. And where is it located?

24 A: I believe it's on Crutchfield Street, over near
25 Durham Regional.

□

1 Q: Is it in the Durham Regional Hospital compounds
2 or complex there?

3 A: Are you familiar with Crutchfield Street?

4 Q: Huh-uh.

5 A: It's the street to the -- if you're facing
6 Regional, to the right. It runs between Duke Street and

7 Roxboro Road there on the Duke Street end.

8 Q: Okay. All right. Is it a part of Durham
9 Regional Hospital?

10 A: I want to say it's a county facility, but I
11 could be -- it's one of those things I've never even
12 given a whole lot of thought.

13 Q: Okay. Are you aware that Duke University
14 operates Durham Regional Hospital?

15 A: Yes, they do now.

16 Q: Are you aware of whether they did then, in
17 2006?

18 A: I know there was a point where Duke was
19 contracted by I guess the Durham County Hospital
20 Corporation to run Durham Regional. Now it seems more
21 like they own it, but I'm not sure. I know we have
22 jurisdiction there.

23 Q: Okay. Because Duke owns it or operates it?

24 A: They're in control of it at least.

25 Q: So that's the test?

□

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1 A: Yes.

2 Q: Okay. So at the time in 2006, are you aware of
3 whether or not Duke operated Durham Access?

4 A: No, I'm not.

5 Q: All right. Now, you were not called to the
6 scene that night, were you, on March 13th?

7 A: No.

8 Q: You were not on duty?

9 A: At the time the event happened, I wasn't on
Page 127

10 duty. I may have been the on-call investigator. I don't
11 recall.

12 Q: Okay. What's an on-call investigator?

13 A: With Duke, the investigators in investigations
14 rotate as on-call, and the on-call is available by pager
15 or cell phone to members of the Duke Police Department if
16 they have need of our services.

17 [WHEREUPON, MS. SPARKS JOINS THE PROCEEDINGS]

18 Q: Okay. All right. Is there an on-call
19 investigator rotating all the time?

20 A: Yes.

21 Q: Off hours, as in nine to five?

22 A: From 5 o'clock in the afternoon to 8 o'clock in
23 the morning.

24 Q: Okay. And an on-call investigator is assigned
25 and it rotates every so often?

□

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1 A: Every seven days.

2 Q: Okay. And you don't recall if you were the
3 on-call investigator on the night of the 13th or not?

4 A: I know I was the on-call investigator -- I was
5 the on-call investigator on or around that time.

6 Q: Okay. Were you called in at all with respect
7 to Ms. Mangum's allegations as the on-call investigator?

8 A: I don't recall receiving a call in regard to
9 the incident itself when it happened.

10 Q: Did you get a call about anything?

11 A: I was called -- I was called -- I don't think
12 it was that night. I think a little later in the day --

13 again, I'm confused about times -- by Chief Dean and
14 asked Chief Dean -- and asked to see if I could obtain a
15 copy of the Durham police report.

16 Q: What did Chief Dean say to you?

17 A: I don't recall if he provided me any details of
18 the incident, but he requested that I contact Durham and
19 see if I could get a copy of their police report.

20 Q: And were you able to?

21 A: Yes.

22 Q: Okay. And do you recall what that looked like?

23 A: It was a printout, two or three pages, maybe
24 four.

25 Q: Sorry. Go ahead.

□

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1 A: That's it.

2 Q: Do you know who wrote it?

3 A: I have a half memory, but it would be a guess,
4 so --

5 Q: Could it be Shelton, Sergeant Shelton?

6 A: I don't recall.

7 Q: Do you recall what that report conveyed?

8 A: What I recall, the report was a victim,
9 obviously a victim listed, descriptions of possible
10 suspects. I don't remember -- what I remember the
11 narrative was that Mangum met officers in the parking lot
12 of Kroger and made an accusation that she'd been sexually
13 assaulted. I recall that the suspects were described as
14 white males. I don't remember if it -- I'm sure it
15 provided an address. I don't recall it as such on the

16 report.

17 Q: Did you ever follow up with the security guard
18 at Kroger who called that in?

19 A: I wasn't investigating the case, no.

20 Q: All right. When did you find out that that
21 scenario that you've just described was false and that
22 she didn't make any such allegation at the Kroger parking
23 lot?

24 MR. SUN: Objection.

25 THE WITNESS: That may be my memory

□

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1 playing me false.

2 BY MR. EKSTRAND:

3 Q: Okay. And what did you do with the report when
4 you got it?

5 A: Provided it to Chief Dean.

6 Q: Okay. Did you ever talk to Gottlieb about the
7 case?

8 A: In what aspect?

9 Q: Well, you've told us about the key card reports
10 and your initial efforts to help him, but in a more
11 general sense after that, did you talk to him about the
12 case?

13 A: After the key card --

14 Q: Uh-huh.

15 A: -- or before the key card or --

16 Q: After you gave the key cards and the photos --

17 A: I met him on occasion and we spoke not
18 specifically about the case. I spoke to him on a number

19 of occasions, but I don't remember the substance of it.

20 Q: well, you gave him photos?

21 A: I gave him photos.

22 Q: Did you ever ask him, "Hey, Sergeant Gottlieb,
23 did she pick anybody out?"

24 A: He told me that -- no, actually, I never asked
25 about the lineups.

□

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1 Q: How did you know there was more than one
2 lineup?

3 A: well, I know that Investigator Soucie put the
4 lineups together and she put together -- she said that
5 she was putting the lineups together.

6 Q: Did you talk to her about the results of those?

7 A: No. It was when they were putting together the
8 search warrant for Edens.

9 Q: Ryan McFadyen's room?

10 A: No, it wasn't Ryan McFadyen's room, it was at
11 their office.

12 Q: No, no, the warrant was --

13 A: To Ryan McFadyen's room, yes. She -- I asked
14 her how she was doing; she said she was busy putting
15 together lineups.

16 Q: Okay. You were at her office?

17 A: I was at Gottlieb's office.

18 Q: Okay. Where is that?

19 A: Their substation -- was at their substation at
20 Northgate Mall.

21 Q: Okay. And that was where they were getting the
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22 warrant prepared for --
23 A: Yes.
24 Q: -- McFadyen's room? Okay.
25 Did you assist with that?

□

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1 MR. SUN: Objection.
2 BY MR. EKSTRAND:
3 Q: The question is, did you assist with issuing a
4 warrant for Ryan McFadyen's room?
5 A: I assisted in -- yes.
6 Q: Okay. What did you do?
7 A: I provided them with pictures of the dormitory
8 for their search warrant.
9 Q: What else?
10 A: I provided Gottlieb with a description of the
11 dorm for the search warrant.
12 Q: What else?
13 A: That's it. Oh, I showed Gottlieb -- Gottlieb
14 to the dorm, and I went to the dorm so that they would
15 see it and know where it was.
16 Q: Okay. And when you got there, you remained
17 there as they searched, right?
18 A: When they served the search warrant, I stood by
19 while they carried out the search warrant.
20 Q: Okay. And when they served it, they read it?
21 A: When they served it, Himan read it.
22 Q: And you were there for that?
23 A: I was there for parts of that.
24 Q: Okay. Did you review the search warrant when
Page 132

25 you were at the office?

□

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1 A: No.

2 Q: Did you ask to?

3 A: No.

4 Q: Did you go with them to get it presented to the
5 judge?

6 A: No.

7 Q: Did they do that after you were at their
8 office?

9 A: Yes, I assume.

10 Q: Okay. And then you met up with them again and
11 took them to Edens?

12 A: Yes.

13 Q: Okay. Do you remember what date that was?

14 A: Not offhand.

15 Q: The same day as the search took place?

16 A: It was the same day, yes.

17 Q: Okay. All right. When you were there helping
18 them prepare the search warrant, did you become aware of
19 an e-mail that was being added to the NTID affidavit?

20 A: I --

21 MR. SUN: Objection.

22 THE WITNESS: Excuse me. What?

23 BY MR. EKSTRAND:

24 Q: Did you become aware of an e-mail that would be
25 added to the prior NTID affidavit?

□

1 A: Do you have a particular e-mail in mind?
2 Q: The e-mail that's in the search warrant that
3 you were helping them prepare.
4 A: There was an e-mail that was allegedly from
5 Ryan McFadyen. I was made aware of that e-mail at that
6 time.
7 Q: During that meeting at their office?
8 A: Uh-huh.
9 Q: Okay. Did you ask them how they got it?
10 A: I don't recall whether I asked or not. I
11 understand they got it through Crime Stoppers.
12 Q: Okay. Do you know who delivered that to them?
13 A: No.
14 Q: Did you look into who delivered that to them?
15 A: No.
16 Q: Did it occur to you that somebody might have
17 gone into Mr. McFadyen's e-mail account and taken it?
18 A: No, that didn't occur to me.
19 Q: Did they say they knew where it came from?
20 A: From an anonymous source.
21 Q: Do you know what the e-mail address of the
22 delivering party was?
23 A: No.
24 Q: The e-mail address dukelose44@gmail.com?
25 A: If I was told that, I don't remember it.

□

1 Q: Do you know anybody who set up an e-mail

2 account by that name?

3 A: No.

4 Q: Were you ever asked to look into who might have
5 done it?

6 A: No.

7 Q: So nobody asked you and you didn't look into
8 who procured an e-mail purportedly from Ryan McFadyen's
9 Duke e-mail account?

10 A: I understand -- I don't remember the exact
11 conversation between me and Gottlieb about where they got
12 the e-mail. What I do remember is that it was from an
13 anonymous source, and his feeling was whoever had sent it
14 was somebody that knew McFadyen that had received the
15 e-mail. Gottlieb.

16 Q: He had a feeling?

17 A: Well, he may have known. I don't know. He
18 didn't share that information with me.

19 Q: All right. You guys are police officers,
20 right, sitting around the table and you're investigators.
21 Did you have any conversation about whether information
22 from an unknown anonymous source had any place in an
23 affidavit --

24 A: I --

25 Q: -- in a search warrant?

□

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1 MR. SUN: Let him finish the question.

2 THE WITNESS: No, we didn't have any -- I
3 didn't have any conversation with them over the validity
4 of the e-mail.

5 BY MR. EKSTRAND:

6 Q: Well, I'm asking you a slightly different
7 question.

8 Do you know whether or not a judicial officer
9 or judicial official reviewing a probable cause affidavit
10 can consider any information from an unknown or anonymous
11 source?

12 MR. SUN: Objection.

13 THE WITNESS: I know that if you're using
14 information from an anonymous source, you should have
15 corroboration.

16 BY MR. EKSTRAND:

17 Q: All right. But this is an unknown anonymous
18 source, right?

19 A: Well, yes.

20 Q: Okay. And you're pretty clear on the
21 proposition that no judicial official can consider
22 information from an unknown anonymous source in
23 determining whether probable cause exists, right?

24 MR. SUN: Objection.

25 THE WITNESS: I'm not an attorney.

□

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1 BY MR. EKSTRAND:

2 Q: You're an investigator.

3 A: I know that there was an e-mail, that Gottlieb
4 included it in his search warrant, that he presented to a
5 judicial official, and that it was -- and that search
6 warrant was signed. Who am I to second-guess a judge.

7 Q: Yeah. Well, I'm asking you whether or not it

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8 occurred to you that there was no point in putting an
9 e-mail from an unknown anonymous source in a probable
10 cause affidavit?

11 A: It occurred to me that Gottlieb had included it
12 in a probable cause affidavit, and he felt that it -- or
13 whatever he had in his affidavit provided him with
14 sufficient probable cause.

15 Q: Okay. Let me ask you this way. If you had an
16 e-mail from an unknown anonymous source, somebody just
17 like this through Crime Stoppers, don't know where it
18 came from, who it came from, it just looks like an e-mail
19 from somebody's account, but you don't know that, and
20 that's all you have. Would you even bother going to a
21 judge with it to get a warrant to search somebody's
22 residence?

23 MR. SUN: Objection.

24 THE WITNESS: The fact is I haven't ever
25 been in that situation where I had that -- and I had to

□

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1 make the decision whether to include it in the affidavit,
2 and I don't have an opinion.

3 BY MR. EKSTRAND:

4 Q: You don't have an opinion. What kind of
5 training do you have in the determination of probable
6 cause?

7 A: I've gone through the PLI.

8 Q: What's that?

9 A: Police Law Institute.

10 Q: Okay. So at the Police Law Institute, did they

11 talk to you at all, did they teach you at all about the
12 idea that if you have nothing but information from an
13 unknown anonymous source, you're not going to get a
14 warrant?

15 A: well, ideally, they taught me you take your
16 probable cause and you put it in an affidavit and you
17 take it before a magistrate or a judge, depending on the
18 nature of the search warrant. You present it to that
19 judicial official, and then they decide whether you have
20 probable cause or not.

21 Q: Okay. So based on your training, in light of
22 all the allegations that were already in the NTID
23 affidavit, was there any need to supplement that to get a
24 warrant to search anybody's room, assuming it was true,
25 of course?

□

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1 MR. SUN: Objection.

2 THE WITNESS: What's your question?

3 BY MR. EKSTRAND:

4 Q: The question is, did you all talk about why on
5 earth you needed to add an e-mail from an unknown
6 anonymous source?

7 A: I don't remember the topic coming out in our
8 conversations.

9 Q: Tell me about the conversation about the
10 e-mail, then.

11 A: I don't -- other than Gottlieb mentioned it to
12 me, I think he read it to me. I don't recall -- there
13 wasn't really a whole lot of conversation about it.

14 Q: Okay. What was the crime that they were
15 investigating on that search warrant?

16 A: I never read the search warrant. I don't
17 recall overhearing what it was. Well, I didn't read it
18 that day. I don't remember.

19 Q: Does conspiracy to commit murder sound
20 familiar?

21 A: I don't remember what the charge was on the
22 search warrant.

23 Q: Okay. All right. Well, having learned all
24 that, who did you tell at Duke about the search warrant
25 itself?

□

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1 MR. SUN: Objection.

2 THE WITNESS: I told Chief Dean about the
3 search warrant when the search warrant was served.

4 BY MR. EKSTRAND:

5 Q: Okay. Did you tell him what was in the search
6 warrant or what was in the affidavit?

7 A: Other than my recollection was that I called
8 Chief Dean and said when we got to Edens dorm and told
9 him Durham is serving a search warrant on one of the
10 lacrosse player's rooms. I don't remember the exact --
11 I'm sure I gave him the room number, but I don't remember
12 any details I gave him.

13 Q: Okay. So you don't remember his reaction to
14 the e-mail or any description of it?

15 MR. SUN: Objection.

16 THE WITNESS: I don't remember mentioning

17 to him that the e-mail was part of the search warrant.

18 BY MR. EKSTRAND:

19 Q: Do you remember mentioning to him that they
20 were investigating a conspiracy to commit murder?

21 A: I simply told him that -- what I recall is I
22 simply told him that I was there with members of the
23 Durham Police Department, Sergeant Gottlieb, at Edens 2C,
24 and they were serving a search warrant on one of the
25 lacrosse players.

□

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1 Q: Okay. All right. I am handing you what we
2 are making as Smith 19. And once we're done with this,
3 I'm going to give you a break.

4 [SMITH EXHIBIT NO. 19 WAS MARKED FOR
5 IDENTIFICATION]

6 Q: This is a news letter from the Duke University
7 Police Department, right?

8 A: Yes.

9 Q: The Ten-Fourteen.

10 A: Oh, okay. Yes.

11 Q: And it looks like you have the banner piece
12 here entitled, "Who Sent That E-mail? by Gary Smith."

13 A: Okay.

14 Q: That's you, right?

15 A: I wrote it. I don't think I titled it.

16 Q: That was in August of 2006, wasn't it?

17 A: Yes.

18 Q: Seems like you have a lot of interest and some
19 training in accessing information about who's sending

20 e-mails and from what location and what IP address. Is
21 that right?

22 A: Well, I was familiar with how to determine the
23 original IP address on an e-mail and, in general,
24 determine what the source of that e-mail was.

25 Q: Okay. So it seems like you have a pretty good

□

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1 understanding of how to track down where an e-mail came
2 from, right?

3 A: Yes.

4 Q: Okay. You've already testified here that you
5 took no steps to find out where Ryan McFadyen's purported
6 e-mail came from, right?

7 A: Right.

8 Q: Are you familiar with an e-mail that was sent
9 through Breck Archer's Duke account?

10 A: No. I don't recall.

11 MR. EKSTRAND: Let's take a break, if that
12 makes sense.

13 THE WITNESS: Thank you.

14 MR. EKSTRAND: All right. It's 3:10.

15 Maybe ten minutes?

16 MR. SUN: Very good.

17 [RECESS - 3:10 P.M. TO 3:29 P.M.]

18 MR. EKSTRAND: We're back on the record.

19 BY MR. EKSTRAND:

20 Q: Before the break, we were talking about your
21 publication in the Ten-Fourteen entitled, "who sent that
22 e-mail."

23 A: Yes.
24 Q: All right. Do you remember writing that?
25 A: I remember writing the first paragraph of it.

□

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1 Q: Okay. All right. And it says, "Reading the
2 E-Mail Header, by Mary Landesman, Your Guide to Antivirus
3 Software"?
4 A: Yes.
5 Q: Who is that?
6 A: It's an article I found online.
7 Q: And your paragraph basically walks you through
8 how to find the IP address of the sender and then where
9 to go to determine to whom the IP was assigned, right?
10 A: Yes.
11 Q: That's arin.net, a-r-i-n.net?
12 A: Yes.
13 Q: Have you ever used that?
14 A: Oh, yes.
15 Q: Okay. You use that to identify, as you say, to
16 determine to whom the IP was assigned?
17 A: It will -- it will help me determine not the
18 individual to whom it was assigned, but the original
19 server and the date and time the e-mail was sent.
20 Q: Okay. And that can often lead you to who
21 originated the e-mail, right?
22 A: It may or may not.
23 Q: Okay. All right. Let me hand you what we've
24 premarked as Smith 20.
25 [SMITH EXHIBIT NO. 20 WAS MARKED FOR

1 IDENTIFICATION]

2 Q: This is an e-mail with just the kind of header
3 information that I think you're describing in this
4 article. Is that right?

5 A: Yes.

6 MR. SUN: Objection.

7 THE WITNESS: I'm sorry. Yeah, more or
8 less.

9 BY MR. EKSTRAND:

10 Q: Okay. Now, at the top, it says return path is
11 breck.archer@duke.edu. Are you familiar with that e-mail
12 address?

13 A: Maybe. At this point, it doesn't really ring a
14 bell.

15 Q: Well, duke.edu, is that the Duke University
16 server?

17 A: Yeah, that's Duke University.

18 Q: Okay, breck.archer, that's the name of the
19 person to whom it belongs, typically?

20 A: It's been a long while since I've done one of
21 these. Usually -- that may be. Usually -- wait a
22 second. Let me read this.

23 [WITNESS EXAMINES DOCUMENT]

24 A: So what's your question again?

25 Q: That the e-mail address belongs to somebody

1 named Breck Archer, right?

2 A: Based on the e-mail, yes.

3 Q: That's how Duke sets up their e-mail accounts
4 pretty much?

5 A: In this -- e-mail accounts or e-mail addresses,
6 what? I'm not sure what you're asking.

7 Q: Okay. I don't want to lead you to an answer.
8 If you don't know, you don't know.

9 A: No, I mean, ask the question again.

10 Q: Does the return path to breck.archer@duke.edu
11 refer to a person named Breck Archer, typically, as Duke
12 sets up their e-mails?

13 A: That -- looking at this e-mail address, seems
14 to me typical of what I've seen in the past.

15 Q: All right. Do you know who Breck Archer is?

16 A: It doesn't ring a bell.

17 Q: Okay. All right. Now, at the very bottom of
18 all this text, it says, "I am going to the police
19 tomorrow to tell them everything that I know. Breck,"
20 right?

21 A: Yes.

22 Q: When was this sent --

23 MR. SUN: Objection.

24 [WHEREUPON, MS. SPARKS LEAVES THE PROCEEDINGS]

25 BY MR. EKSTRAND:

□

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1 Q: -- according to the header?

2 A: I'm looking to see if I can find that
3 information.

4 According to the e-mail, it appears that this
5 was sent on the 14th of April 2006 at 3:06:01.

6 Q: Okay. Were you aware of this e-mail being
7 sent?

8 A: If I've seen this e-mail before, I don't
9 remember it.

10 Q: Were you aware -- do you recall there being a
11 report from Breck Archer or his counsel indicating that
12 somebody had sent an e-mail from his account without his
13 consent?

14 A: I don't recall it.

15 Q: Do you remember giving anybody access to either
16 Breck's account or a means to access Breck's account?

17 A: No.

18 Q: Are you sure?

19 A: Yes.

20 Q: Have you ever accessed a student's e-mail
21 account before?

22 A: No.

23 Q: It's never come up, or why not?

24 A: I do not recall ever, in the case of an
25 investigation or anybody else's investigation, giving

□

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1 anybody the means to access a student or anybody else's
2 e-mail account without their permission. And that would
3 mean they, the person, the owner of the account, would
4 have to provide the information to access the account. I
5 don't recall even doing that.

6 [WHEREUPON, MS. SPARKS JOINS THE PROCEEDINGS]
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7 Q: Okay. Why is that, in your mind, any different
8 than giving access or giving reports of a student's key
9 card data?

10 A: I don't have access to their e-mail
11 information. I can't get it.

12 Q: Okay. So is that the difference?

13 MR. SUN: Objection.

14 THE WITNESS: Repeat, the difference
15 between e-mail and what?

16 BY MR. EKSTRAND:

17 Q: Duke card accounts.

18 A: At -- I don't have access to their e-mail. I
19 don't access a person's account without a court order.
20 At that time, my understanding with the Duke card
21 information that I released it was I didn't need their
22 permission to release it, and at the time I released it,
23 that I didn't need a court order.

24 Q: All right. Let me just ask you, when a search
25 warrant is executed on Duke campus --

□

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1 A: Yes.

2 Q: -- does Duke University, as a matter of course,
3 get a copy of the warrant?

4 A: No.

5 Q: Do they ever?

6 A: I only recall two, maybe three instances, maybe
7 four, where Durham or another agency served search
8 warrants on campus, and I don't recall -- can't say that
9 we didn't in at least one of them. But I don't recall

10 getting copies of search warrants at the time the warrant
11 was served, any of them.

12 Q: Are you aware of any SOP that would require
13 that --

14 A: No. To my knowledge, there is no SOP.

15 MR. SUN: Let him finish the question,
16 please.

17 BY MR. EKSTRAND:

18 Q: Do you know if there's any SOP governing the
19 execution of search warrants generally on Duke campus?

20 A: There may be. I don't recall it offhand.

21 Q: Okay. Now, just to be clear, during the search
22 of Ryan McFadyen's dorm room, you were present?

23 A: For most of it.

24 Q: Okay. And you were also present for the search
25 of his car?

□

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1 A: I was present for the search of his car.

2

3 Q: All right. And to get them, the police
4 officers who executed the warrant, into the dorm room,
5 did you have to unlock any doors?

6 A: Into the dorm room itself, no.

7 Q: Into the dorm building?

8 A: Swipe the card.

9 Q: And so you unlocked the door, right?

10 A: Into the dorm, yes.

11 Q: Swipe of a card?

12 A: Huh?

13 Q: With the swipe of the card?

14 A: A swipe of the card.

15 Q: Did you do the same thing when you assisted
16 them in getting access to the dorm to interrogate members
17 of the team?

18 MR. SUN: Objection.

19 THE WITNESS: I was not present when they
20 entered the dorm to interview members of the team.

21 BY MR. EKSTRAND:

22 Q: So you did not help them access the dorm?

23 A: I made sure Sergeant Gottlieb knew who he
24 needed to make contact with to make arrangements to enter
25 the dorm. I made sure the person that was on duty knew

□

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1 that he might call to access the dorm.

2 Q: And were you present at all for the search of
3 the residence at 610 North Buchanan?

4 A: No.

5 Q: Were you present at all for the execution of
6 the NTID order?

7 A: NTID order?

8 Q: The nontestimonial identification order?

9 A: No.

10 Q: Do you know who was present from the Duke
11 University Police Department for the search of 610 North
12 Buchanan?

13 A: Other than what was on the report, I don't
14 know.

15 Q: All right. Are you familiar with the Crime
Page 148

16 Stoppers poster that was distributed around Durham and
17 Duke?

18 A: Vaguely.

19 Q: Do you know how that was made and produced?

20 A: (Shakes head.)

21 Q: You don't know anything about it?

22 A: No.

23 Q: Now, let me ask you about the pictures that you
24 gave to the Durham police officers, I guess it was
25 Gottlieb. You said you got that from a website. Is that

□

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1 true?

2 A: which pictures are we -- I gave them --

3 Q: A CD?

4 A: I gave them pictures -- you're referring to the
5 pictures of the lacrosse players?

6 Q: Uh-huh.

7 A: Okay. I got them off the website.

8 Q: And you said that was goduke.com?

9 A: Yes.

10 Q: Are you sure?

11 A: Absolutely.

12 Q: Okay. You didn't get them from the sports
13 information officer or department?

14 A: No.

15 Q: And you burned them onto a CD?

16 A: Yes.

17 Q: why didn't you just tell the Durham police to
18 go to www.goduke.com?

19 A: He was there. We were waiting for copies of
20 the reports that we were going to give to him. I just --

21 Q: The site was still live with those pictures at
22 the time?

23 A: Yes.

24 Q: Okay. All right. Did you give any other
25 pictures besides the ones from the website --

□

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1 A: Of la- --

2 Q: -- of any of the players?

3 A: I don't recall giving them anything but what
4 was on the website.

5 Q: All right. Is it true that Stotsenberg was the
6 liaison at the time to the Durham Crime Stoppers?

7 A: Yes.

8 MR. SUN: At what time?

9 BY MR. EKSTRAND:

10 Q: At the time of the investigation of Mangum's
11 allegations.

12 A: I know -- I recall Greg Stotsenberg was a
13 liaison and served as a liaison between the department,
14 our department and the Durham Police Department for Crime
15 Stoppers.

16 Q: All right. What did that role entail?

17 A: What I recall is it would entail that if I had
18 information that I needed to submit or someone within
19 investigations or the Duke Police Department wanted to
20 submit to Crime Stoppers, at that point we'd give it to
21 Stotsenberg, and he would submit it. On occasion, I

22 believe -- I remember he may have -- he may have
23 delivered rewards to people for Crime Stoppers'
24 information.

25 I remember -- beyond that, I know he had -- I

□

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1 know he did some things with Crime Stoppers, but, like
2 I -- I seem to -- I remember he may have substituted
3 for -- what's his name -- the Durham officer, Rick
4 Addison, at some point while Addison was out of town with
5 Crime Stoppers and submitting information, and I don't
6 know if he ever distributed information.

7 Q: Okay. He would, though?

8 A: Huh?

9 Q: He would?

10 A: He should remember what his activity was with
11 Crime Stoppers.

12 Q: Okay. All right. I'm going to hand you what
13 I'll mark as Smith 21.

14 [SMITH EXHIBIT NO. 21 WAS MARKED FOR
15 IDENTIFICATION]

16 Q: This is just a document that's denominated a
17 Federal Statement, Form 990. I don't necessarily expect
18 you to know what that is, but as you look at the roster
19 of names, do these people listed here appear to be
20 familiar to you or known to you?

21 A: Robert Dean is familiar to me.

22 Q: He's the chief?

23 A: He's the current -- well, no, not the current.

24 He was the chief of the Duke Police Department. And Sue
Page 151

25 wasiolek's name is familiar to me.

□

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1 Q: who is she?

2 A: She's a dean within the Duke -- within Duke
3 University, or was. I'm not sure what her role is --
4 exact role is now.

5 Q: How about Dan Hill, do you know him?

6 A: The name doesn't ring any bells. Maybe I
7 should, but I don't.

8 Q: what about Kent Fletcher?

9 A: The name sounds familiar.

10 Q: Is he with the Duke or Duke University Police
11 Department?

12 A: I couldn't place him.

13 Q: Did you ever talk to Dean Sue about the case?

14 A: I don't believe so. I don't believe so.

15 Q: Are you familiar with Robert Dean being the
16 chair of the Durham City/County Crime Stoppers?

17 A: I remember he had involvement with Crime
18 Stoppers. I didn't recall what his involvement was.

19 Q: Is that during the case of the investigation of
20 Mangum's allegations?

21 A: I don't know if he held that role -- I don't
22 know if he was in -- if he held that position during --
23 well, looking at this, at least at some point he did, but
24 I don't know when he took the position and when he left
25 it.

□

1 Q: Okay. All right. Now, do you recall at any
2 time anybody within the Durham or Duke Police Departments
3 asking for all the Duke officers who had any interactions
4 with Mangum on the night she made her allegations to
5 write any reports about it?

6 MR. SUN: Objection.

7 THE WITNESS: Repeat your question.

8 BY MR. EKSTRAND:

9 Q: Do you recall any specific request that
10 officers of the Duke Police Department who had
11 interactions with Mangum on March 13th, 14th, were asked
12 to write to reports about that?

13 A: No.

14 Q: Did you ever write a separate report about the
15 events of the night?

16 A: No.

17 Q: Okay. All right. Let me be really specific.
18 Do you ever -- do you recall ever hearing about an order
19 or directive to Duke police officers to revise their
20 statements from the night?

21 A: No.

22 Q: To revise their memories from the night?

23 A: No.

24 Q: To write reports that revised their memories or
25 the statements from the night?

□

1 A: No.

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MR. SUN: Objection.

2

3 BY MR. EKSTRAND:

4 Q: All right. Let me hand you what I'll mark as
5 Exhibit 22.

6 [SMITH EXHIBIT NO. 22 WAS MARKED FOR
7 IDENTIFICATION]

8 Q: While I do that, do you know -- can you tell us
9 who William Mazurek is?

10 A: He was a patrol officer.

11 Q: For?

12 A: For Duke University Police Department.

13 Q: Okay. All right. And the document you have in
14 front of you, Exhibit 22, do you recognize that?

15 A: I don't recall ever seeing this before. I
16 don't know that I haven't; I just don't remember it. I
17 haven't seen it before.

18 Q: Okay. In terms of a form, this appears to be a
19 narrative of sorts, but is this any kind of a standard
20 form for the Duke Police Department to use?

21 A: Well, statements by officers are sometimes
22 placed on continuation pages.

23 Q: Does this look like a continuation form?

24 A: I'm not -- but just as often, the officer might
25 simply pull up a word document and put it in memo form.

□

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1 Q: Okay. So you're saying this is a common --

2 A: This isn't --

3 MR. SUN: Objection.

4 Let him finish the question.

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THE WITNESS: Right.

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BY MR. EKSTRAND:

Q: Is this a common approach to supplementing a statement?

A: It's not an unusual.

Q: Okay. Did you ever have any conversations with Officer Mazurek about his actual recollections?

A: I don't remember.

Q: would you be surprised if you learned that after he left the employment of Duke University, his recollection was very different than what he wrote here?

A: That wouldn't -- I don't -- if -- I'm not sure that it would surprise me.

Q: why?

A: I just -- I'm not aware that he changed his statement. I'm not aware of what his opinion after the fact was. To be surprised, I'd have to have an opinion, and since I don't know, I don't have an opinion.

Q: Okay. All right. Let me hand you what I'll mark as 23.

[SMITH EXHIBIT NO. 23 WAS MARKED FOR

□

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IDENTIFICATION]

Q: And just keep 22 in front of you for a second.

At the bottom, if you would, just read the entry from Himan's report --

A: which one?

Q: It's page number 30 of the document, Bates stamped number 9028.

8 At the bottom it says, November 2, 2006, 9:27
9 in the morning, spoke with William Mazurek.

10 A: Oh, I see, yes.

11 Q: Is that the same William Mazurek whose name
12 appears on the report, Exhibit 22?

13 A: That should be the same.

14 Q: Did William Mazurek start working at the
15 Chatham County Sheriff's Office sometime around July of
16 2006?

17 A: He left our department to work for a sheriff's
18 department. Yeah, I believe it was the Chatham County
19 Sheriff's Department. As far as the date goes, that's
20 what this says.

21 Q: All right. And it says here in Himan's report
22 that it appears to be an interview that Himan conducted
23 of Mr. Mazurek. It says that Mazurek started at Duke in
24 February of 2004. Does that square with your
25 recollection?

□

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1 A: I don't remember when he started.

2 Q: It says here that Mazurek, along with Officer
3 Day, were officers in charge. He was 740 and Officer Day
4 was 741.

5 A: Okay.

6 Q: Does that make sense or were they the officers
7 in charge at the time of Mangum's allegation?

8 MR. SUN: Objection.

9 THE WITNESS: 740 and 741 are designations
10 for radios within the hospital. This says that on that

11 day, he and Day were in charge. That would -- the date
12 could have been a date -- they very easily could have
13 been assigned to the hospital on that day.

14 BY MR. EKSTRAND:

15 Q: Okay. All right. It says in Himan's report,
16 he cites that victim was brought into the hospital and
17 was crying. He stated it was almost not real, possibly
18 faking, was not sure. He stated at no point did he smell
19 alcohol on her. He did state that she seemed like she
20 was in a daze, that he never asked her any questions, and
21 that Sara Falcon was designated to be with the victim in
22 the family conference room.

23 A: Uh-huh. Yes.

24 Q: Okay. Do you know anything about that report
25 from Himan or that interview of Mazurek?

□

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1 A: No.

2 Q: Did you ever see that before?

3 A: No.

4 Q: All right. Let me hand you what we've marked
5 as Exhibit 24.

6 [SMITH EXHIBIT NO. 24 WAS MARKED FOR
7 IDENTIFICATION]

8 Q: This is a supplement that Christopher Day
9 wrote.

10 Now, this is entitled a continuation page. And
11 is that signed by Christopher Day?

12 A: Yes.

13 MR. SUN: Objection.

14 BY MR. EKSTRAND:

15 Q: It says, "This narrative is a continuation to
16 an operations report." And does that refer to his
17 original operations report that we've submitted already?

18 A: If his was numbered 1259, then yes. I don't
19 want to go through the file --

20 THE REPORTER: I'm sorry?

21 THE WITNESS: If his original report was
22 titled -- was numbered OCA File Case Number 1259, then
23 it's a continuation to his report.

24 BY MR. EKSTRAND:

25 Q: Okay. Let me hand you --

□

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1 A: I think you've already --

2 [SMITH EXHIBIT NO. 25 WAS MARKED FOR
3 IDENTIFICATION]

4 Q: Let me just go ahead, so we don't get confused,
5 I've handed you Exhibit 25. Is that what you're
6 referring to --

7 A: Yes.

8 Q: -- as the original report by Christopher Day?

9 A: Yes.

10 Q: What's the date of that report?

11 A: 3/24/06 [sic].

12 Q: Okay. And the substance of the narrative, what
13 is that occurring?

14 A: It talks about Crystal Mangum being brought
15 into the emergency room.

16 Q: On what date?

17 A: On the 14th of March '06.
18 Q: Okay. So Exhibit 24 is dated March 31, 2006,
19 right?
20 A: Yes.
21 MR. SUN: Bob, is Exhibit 25 the same as
22 what you marked earlier?
23 THE WITNESS: Yes.
24 MR. EKSTRAND: I believe it is. For
25 purposes of the record, I just wanted to make sure that

□

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1 these --
2 MR. SUN: I didn't want to go through and
3 look at the -- I'll accept that representation it's the
4 same.
5 MR. EKSTRAND: well, let's keep it as
6 25 --
7 MR. SUN: That's fine.
8 MR. EKSTRAND: -- and that way the record
9 will reflect what the original report was. And that is
10 number --
11 THE WITNESS: Thirteen.
12 MR. EKSTRAND: Thirteen of twenty-five.
13 Thirteen is page 1 of 25.
14 MR. SUN: Why don't you just confirm that
15 13 is page 1 of 25.
16 THE WITNESS: Looking at this, what I see,
17 13 appears to be page 1 of 25; 25 has names blanked out.
18 BY MR. EKSTRAND:
19 Q: Okay. All right. So more than two weeks

20 later, this continuation page is written, and it says,
21 "This narrative is a continuation to an operations report
22 in reference to assisting Durham police at 610 North
23 Buchanan. After all Duke police officers cleared from
24 610 North Buchanan, I went to the Duke emergency
25 department to meet with Lieutenant Best, the watch

□

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1 commander for Duke police. While standing at the
2 emergency department entrance, I overheard the District 2
3 sergeant state that the victim, which was inside the
4 emergency department, had changed her story several
5 times, and that if charges were filed, they would
6 probably not exceed that of a misdemeanor."

7 And then it goes on, it says, "In reference to
8 the conversation with Durham officers, I did not speak
9 directly with the victim or with an investigator, nor did
10 I ask questions regarding the case. The information was
11 secondhand from the patrol sergeant standing on the
12 emergency room dock outside the ED."

13 Can you surmise what the purpose of this
14 supplemental report is?

15 A: It appears, based on the content, to be a
16 clarification and additional detail to the original
17 report.

18 Q: What's that detail?

19 A: Let me see.

20 [WITNESS EXAMINES DOCUMENT]

21 A: The only difference I see between the last
22 paragraph of the original report and the supplement would

23 be how Day came to the -- how Day came to write the
24 original statement or get the information for the
25 original statement that the charges would not exceed a

□

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1 misdemeanor.

2 Q: Okay. He was referred to by Mazurek as the
3 officer in charge, one of the two, right?

4 A: He may have been the OIC. I don't know.

5 Q: That's what Himan's report reflects.

6 A: Himan's report is --

7 Q: You just read it.

8 A: It's page --

9 Q: It's page 30 of Himan's supplemental report.

10 A: Says "he along with Officer Day were officer in
11 charge." That right there is confusing the way it's
12 written, and it doesn't say which of them was the officer
13 in charge.

14 Q: Okay. All right.

15 A: And now I'm lost again. Okay.

16 Q: Seems like what's new in this report from Day
17 is that he's saying he did not speak directly with Mangum
18 or with any investigator, and he says, "Nor did I ask
19 questions regarding the case."

20 A: Yes.

21 MR. SUN: Objection.

22 BY MR. EKSTRAND:

23 Q: Okay. Does that make sense to you?

24 A: Doesn't have to.

25 MR. SUN: Objection.

1 THE WITNESS: I know that's not -- looking
2 at the original report and looking at the follow-up, not
3 having spoken to Officer Day about his original report or
4 his follow-up, it seems to me that he simply clarified
5 the original statement in the original report.

6 BY MR. EKSTRAND:

7 Q: All right. My question is, does it make sense
8 to you that a person, an officer who has just gone to the
9 scene of an alleged rape, comes back and doesn't ask
10 questions regarding the case?

11 A: We weren't investigating the case; Durham was
12 investigating the case.

13 Q: What were they doing at the house? All those
14 Duke police officers, what were they doing at the house?

15 A: Responding to the initial call.

16 Q: Which was routed to Duke Police Department,
17 right?

18 A: I don't recall how the routing worked,
19 whether -- and I don't recall at what point Durham
20 responded to it.

21 Q: Okay. All right. But that doesn't hit you at
22 all sideways that he didn't ask any questions about the
23 case?

24 A: It wasn't our investigation. Durham was
25 investigating it.

1 [WHEREUPON, MS. SPARKS LEAVES THE PROCEEDINGS]

2 Q: And exactly what is it that you are relying on
3 when you say that at that time on that dock in the early
4 morning hours of March 14, 2006, that Duke University
5 wasn't -- Duke University Police weren't investigating
6 the case?

7 A: My understanding is that Durham was the
8 primary -- primary in the case. We were not
9 investigating it.

10 Q: Okay. Go ahead.

11 A: Had we been investigating a sexual assault as a
12 crime, it would have been on this report.

13 Q: Would you have gone to the house to --

14 A: To --

15 Q: -- to the residence or investigate --

16 A: I don't --

17 MR. SUN: Let him finish the question.

18 THE WITNESS: Okay. Right. I'm not aware
19 that any of our officers at the scene interviewed anyone.

20 BY MR. EKSTRAND:

21 Q: But the report says that nobody was there.

22 A: Well, again, if our officers receive a call for
23 service, they may very well go to the scene initially to
24 determine whether it's something that Duke is going to be
25 involved with or not. To do that, you have to ask people

□

1 questions.

2 Q: Okay. All right. Do you recall anything about
3 why it was important that Officer Day clarify that he

4 didn't ask questions or speak directly to the victim
5 or --

6 A: No.

7 Q: You don't remember?

8 MR. SUN: Objection.

9 THE WITNESS: I'm sorry. Would you
10 repeat --

11 MR. SUN: Let him finish the question.

12 THE WITNESS: I'm sorry.

13 BY MR. EKSTRAND:

14 Q: I think he answered it. But you don't remember
15 anything about why -- what caused Officer Day to write
16 this supplemental report so long after the fact?

17 MR. SUN: Objection.

18 THE WITNESS: I don't have any knowledge
19 of that.

20 BY MR. EKSTRAND:

21 Q: You don't have any knowledge of why he wrote
22 his report about the same time these others are writing
23 their reports?

24 MR. SUN: Objection.

25 THE WITNESS: No.

□

1 BY MR. EKSTRAND:

2 Q: Let me hand you Exhibit 26.

3 [SMITH EXHIBIT NO. 26 WAS MARKED FOR
4 IDENTIFICATION]

5 Q: Can you identify this document?

6 A: Can I identify the document?

7 Q: Uh-huh.

8 A: It appears to be a statement written by Officer
9 Falcon.

10 Q: Okay. It says, "S., Number 12." What does
11 that -- what is that about? Is that her badge number or
12 ID number or something?

13 A: I -- I don't know what Number 12 refers to.

14 Q: Okay. Let me read from this report. Does it
15 have a date, by the way?

16 A: Yes.

17 Q: What's the date?

18 A: 28 March 2006.

19 Q: Okay. So two weeks after the alleged -- the
20 allegations that were investigated at the emergency
21 department, right?

22 A: Right.

23 Q: Okay. So two weeks later, she writes this
24 report. Falcon is a female, correct?

25 A: Yes.

□

1 Q: All right. Do you know where she is now?

2 A: I have no idea where she is now.

3 Q: Okay. All right. It says here she was
4 stationed in the emergency room on the date that Crystal
5 Mangum arrived there.

6 And then at the bottom, I want to read
7 something to you. Tell me what you think about it. She
8 says, "I never asked her," Mangum, "any questions, and
9 she never verbally directed anything to me. She only

10 cried out the above information to the male nurse and the
11 Durham city officers in the doorway while I was trying to
12 calm her down. Not at any time did I direct any
13 questions to Ms. Mangum concerning the investigation by
14 the Durham City PD. Not at any time was I a direct party
15 to any investigation of the Durham City PD of this
16 alleged incident other than to assist the outside agency
17 of Durham City PD."

18 Does that sound familiar to you?

19 MR. SUN: Objection.

20 THE WITNESS: I don't recall seeing this
21 document before.

22 BY MR. EKSTRAND:

23 Q: I'm asking if these statements seem familiar to
24 you, that, "I never asked her any questions. She never
25 verbally directed anything to me. Not at any time did I

□

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1 direct any questions to Ms. Mangum concerning the
2 investigation. Not at any time was I a direct party to
3 any investigation."

4 A: Familiar in what way?

5 Q: Is it familiar? Does it kind of seem a lot
6 like what we just read from Officer Day?

7 A: In Officer Day's --

8 Q: Supplemental report about the same day.

9 A: -- supplemental continuation page, he clarifies
10 that he did not speak directly with the victim in the
11 investigation. In Sara Falcon's statement, she writes
12 that she did not question the victim.

13 [WHEREUPON, MS. SPARKS JOINS THE PROCEEDINGS]

14 Q: Okay. I want to take you back to an exhibit we
15 were talking about, the Himan report, Exhibit Number 23.
16 If you would turn to page 30 again. This time I want you
17 to -- well, actually, turn to page 29, at the bottom, the
18 entry dated October 30, 2006, at 9:39 a.m. It begins,
19 "Met with Sara Beth Falcon." Goes on to say, "She was
20 working for the Duke police on March 14th when the victim
21 came in to the Duke Hospital." That Officer Day was the
22 officer in charge.

23 Does that suggest to you that Officer Day was
24 the officer in charge at the hospital?

25 A: That suggests to me --

□

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1 MR. SUN: Objection.

2 THE WITNESS: What this says is that
3 officer Day -- she wrote she allegedly told Himan that
4 Officer Day was the officer in charge.

5 BY MR. EKSTRAND:

6 Q: Okay. All right. Now, the second paragraph of
7 Himan's report says that, "Falcon stated that Lieutenant
8 Best and a sergeant were called in and other people were
9 also called. She didn't ask why but thought it was weird
10 that they were calling people in. She thought that Major
11 Schwab was called in." And she was with Ms. Mangum. She
12 said that during her time with Ms. Mangum, "Durham police
13 sergeant kept going in and out of the room and stated, 'I
14 have to conduct an investigation.' At one point he asked
15 her to leave the room. He was inside the room alone with
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16 Crystal Mangum, and that happened once. And after he
17 left the room, he said loudly so everyone around heard
18 him say, quote, 'I think she is lying,'" end quote.

19 Do you see that anywhere in her report on
20 Exhibit 26 that the Durham sergeant interviewed her,
21 Ms. Mangum, and came out of the room and said, quote, "I
22 think she is lying"?

23 A: I do not see that statement, that quote in her
24 statement.

25 MR. SUN: And identify, just for the

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1 record, what you were looking at by exhibit number.

2 THE WITNESS: I do not see that quote in
3 her statement, which is Exhibit 26.

4 BY MR. EKSTRAND:

5 Q: Okay. This reference that she's watching all
6 these people being called in and thinking Major Schwab
7 was called in and Lieutenant Best was called in and isn't
8 sure what that's all about, did you ever hear anything
9 about that, about the senior Duke Police Department
10 officials being called in to the ED?

11 MR. SUN: Objection.

12 THE WITNESS: I don't recall around the
13 time of the incident knowing that Major Schwab had been
14 called in. Lieutenant Best was the squad lieutenant.

15 BY MR. EKSTRAND:

16 Q: Okay. And it was, according to this note,
17 Lieutenant Best that asked Falcon to write a report a
18 couple of weeks after the event, which would be around

19 March 28, 2006, right?

20 A: Wait a second. That would have been 14 days
21 after March 14th.

22 Q: The Himan report, you're saying, was a couple
23 of weeks later that Lieutenant Best asked her to complete
24 a report?

25 A: Yes.

□

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1 Q: All right. Do you know anything about
2 Lieutenant Best asking anybody to complete or write
3 reports of events at the hospital like which you've just
4 reviewed?

5 A: No.

6 Q: And do you know who asked Christopher Day to
7 write his supplemental report?

8 A: No.

9 Q: Actually, I'm just going to hand you quickly
10 what we've marked or are marking 27, Smith 27.

11 [SMITH EXHIBIT NO. 27 WAS MARKED FOR
12 IDENTIFICATION]

13 Q: At the bottom, there's a reference -- this is,
14 I believe, Sergeant Gottlieb's report, at the bottom
15 dated March 29, 2006, at 1300. I'll just read the entry
16 and ask you a question about it.

17 It says, "Investigator Himan and I were
18 summoned to a meeting at police headquarters to discuss
19 the case with Durham police command staff, Duke police
20 command staff, city manager, and the police department
21 legal advisor." And that's March 29th.

22 Is that the meeting that you believe Gottlieb
23 told you about?

24 MR. SUN: Objection.

25 THE WITNESS: I don't know if that's the

□

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1 meeting Gottlieb told me about.

2 BY MR. EKSTRAND:

3 Q: I know. But does it sound like it? Does it
4 square with your recollection of what he told you about?

5 A: I don't know if it's the meeting.

6 Q: I understand that. The question is different.

7 A: I know Gottlieb and Chief Chalmers and Graves
8 and Dean met at some point to discuss the case. I do not
9 know if they met on any other date, at any other time. I
10 don't know.

11 Q: All right. I don't think you've answered my
12 question. The question is, does that description square
13 with your recollection of what Gottlieb described to you?

14 A: Gottlieb told me that he and Chalmers and
15 Graves and Dean met. I do not recall him mentioning
16 anybody else being at the meeting.

17 Q: Okay. All right. Hang on a second.

18 [BRIEF PAUSE]

19 Q: Do you know who gave you the role of lead
20 investigator for the Duke Police Department in the case,
21 who assigned that to you?

22 MR. SUN: Objection.

23 THE WITNESS: I wasn't the lead
24 investigator in Durham's investigation of the case.

25 BY MR. EKSTRAND:

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1 Q: You called yourself the lead investigator at
2 one point. I'm asking you who gave you the designation?

3 A: I was appointed or told I was lead investigator
4 for the Duke University investigations section by Phyllis
5 Cooper.

6 Q: Relating to the case of Mangum's allegation or
7 of all allegations of all crimes?

8 A: I was our lead investigator. That did not
9 mean -- that meant that I did -- I carried out some of
10 the functions that the lieutenant would normally carry
11 out. But since we didn't have a lieutenant, I got them.
12 Essentially, I did case management. I did statistics.
13 Case management included making case assign- -- it was
14 case assignments.

15 Q: Okay. The question is, who gave you the title?

16 A: Of lead investigator?

17 Q: The role, yes.

18 A: I was appointed lead investigator for the
19 investigative section by Phyllis Cooper.

20 Q: Okay.

21 A: Well --

22 Q: Huh?

23 A: Okay.

24 MR. EKSTRAND: All right. Give me about
25 five minutes. I think I might be done.

1 [RECESS - 4:26 P.M. TO 4:32 P.M.]

2 MR. EKSTRAND: Back on the record briefly
3 to announce that we have no further questions, and I'll
4 just repeat the stipulation Mr. Thompson made earlier
5 that we don't -- we don't feel comfortable with the
6 documents that have been produced and hope that we don't
7 have to recall or continue this deposition, but we may
8 need to, depending on what comes up.

9 MS. SPARKS: And thank you for your time.

10 MR. EKSTRAND: Very much.

11 MR. KING: Nothing from me.

12 MR. SHUIRMAN: No, sir.

13 MR. SUN: Give us five minutes.

14 MR. EKSTRAND: You bet.

15 [RECESS - 4:33 P.M. TO 4:39 P.M.]

16 CROSS EXAMINATION

17 BY MR. SUN:

18 Q: Mr. Smith, just -- I think we all identified
19 ourselves at the beginning, but I'm Paul Sun, and I'm
20 just going to ask you a couple of questions.

21 Pull out Exhibit 6, if you would, please.

22 A: Six.

23 Q: Mr. Smith, what's the subject line on this
24 e-mail that's been marked as Exhibit 6?

25 A: "The 46."

□

1 Q: How many names are on this e-mail that you sent

2 to Roland Gettliffe?

3 A: Forty-four.

4 Q: At the time that you asked Mr. Gettliffe to run
5 a report with Duke card information regarding -- let's
6 try that again.

7 At this time when you were communicating with
8 Mr. Gettliffe about those Duke lacrosse players, you
9 wanted him to run the report for Duke card information
10 about, was there any other list that you provided to
11 Mr. Gettliffe?

12 A: No.

13 Q: Mr. Smith, if you'll look at Exhibit 8, please.

14 A: Okay.

15 Q: Mr. Smith, do you recall being asked some
16 questions about this document that was marked Exhibit 8?

17 A: Yes.

18 Q: Do you recall being asked some questions about
19 when it was that you disclosed that you had provided Duke
20 card information to the Durham police?

21 A: Yes.

22 Q: Do you recall that you were asked to try to
23 relate the time when you provided the Duke card
24 information to the Durham police, that you were asked to
25 relate that to the time of this e-mail, Exhibit 8?

□

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1 A: Yes.

2 Q: Mr. Smith, what event would allow you most
3 accurately to identify the time it was when you disclosed
4 for the first time that you had provided the Duke card

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information to the Durham police?

6 MR. EKSTRAND: Objection.

7 MR. SUN: What's the basis for the
8 objection?

9 MR. EKSTRAND: I don't know -- I don't
10 know what the question is asking. There's too much
11 preamble there.

12 MR. SUN: Okay.

13 BY MR. SUN:

14 Q: Mr. Smith, what event, if any, would allow you
15 most accurately to determine the time when it was that
16 you provided notice that you had given Duke card
17 information to the Durham police, you provided that
18 notice to anyone?

19 A: That would be when I spoke -- when Greg
20 Stotsenberg and I met with Paul Stirrup.

21 Q: When in chronological time was that?

22 A: That was sometime after the date on this
23 e-mail.

24 MR. SUN: I don't have any further
25 questions.

□

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1 MR. EKSTRAND: We're all set. Thank you
2 so much.

3

4 _____
[DEPOSITION ADJOURNED AT 4:44 P.M.]

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1 I have read the foregoing pages which contain a
2 correct transcription of the answers given by me to the
3 questions herein recorded. My signature is subject to
4 corrections on the attached errata sheet, if any.

5
6 signed this ____ day of _____, _____.

7
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10

GARY NEAL SMITH

Smith, Gary - Vol. 1 (2)

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STATE OF _____

COUNTY OF _____

Subscribed and sworn to before me this _____ day of
_____, _____.

Notary Public

My commission expires:

□

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1 STATE OF NORTH CAROLINA
2 COUNTY OF WAKE

3
4
5

C E R T I F I C A T E

6 I, Cathleen M. Clack, notary public/court reporter,
7 do hereby certify that the above-named was duly sworn or
8 affirmed prior to the taking of the foregoing deposition;
9 and that said deposition was taken and transcribed under
10 my supervision; and that the foregoing pages, inclusive,
11 constitute a true and accurate transcription of the
12 testimony of the witness.

13 I do further certify that the persons were present

14 Smith, Gary - Vol. 1 (2)
15 as stated in the caption.

16 I do further certify that I am not of counsel for or
17 in the employment of either of the parties to this
18 action, nor am I interested in the results of this
19 action.

20

21 This is the 13th day of January, 2012.

22

23

24

25

Notary Public #20021920067

□