

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

Reported by:

December 30, 2011 - 9:37 a.m.

Cathleen M. Clack

## Deposition of Gary Smith

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?

## Deposition of Gary Smith

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?

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.

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 --

## Deposition of Gary Smith

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  
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

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  
14 IDENTIFICATION]

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?