

# EXHIBIT 18

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

EDWARD CARRINGTON, et al., )  
 )  
Plaintiffs, ) Civil Action No.  
 )  
v. ) 1:08-CV-00119  
 )  
DUKE UNIVERSITY, et al., )  
 )  
Defendants. )  
 )  
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Videotaped Deposition of MICHAEL P. CATALINO

Washington, DC

Saturday, February 25, 2012

1 Q Do you remember stopping at the house at  
2 Urban Street before going back to your dorm room?

3 A No.

4 Q That evening, did you hear Nick O'Hara make  
5 a comment about a cotton shirt?

6 MS. SMITH: Objection to the extent that  
7 your knowledge is solely limited to your  
8 communications with counsel, I would instruct you not  
9 to answer. To the extent that you heard something  
10 that night or you have knowledge of something outside  
11 of communications with counsel, then you can answer  
12 the question.

13 BY MR. FALCONE:

14 Q And I apologize if that wasn't clear, but  
15 my question was expressly, that evening, did you hear  
16 Nick O'Hara make a comment about a cotton shirt?

17 A No.

18 Q Have you since heard Nick O'Hara -- strike  
19 that. Keeping in mind your counsel's objection, have  
20 you since heard that Nick O'Hara made a comment about  
21 a cotton shirt?

22 MR. GUSTAFSON: I just reiterate the  
23 instruction, not merely an objection, an instruction  
24 not to comment on things you've heard from counsel.

25 A So I don't want to answer that.

1 certainly not. And I made that clear on the record  
2 before we took the break.

3 MR. FALCONE: We're talking about -- I'm  
4 asking questions about the other subjects that were  
5 discussed in the meeting, who called the meeting.  
6 And I understood the instructions to be not to  
7 answer. Is that correct?

8 MS. SMITH: As to his -- I mean, I want to  
9 clarify. I don't know what you're saying as to some  
10 of the questions, because some of the questions you  
11 asked I did not object to, that were directly related  
12 to the videotape. And now you're talking about other  
13 portions of the meeting in which there are other  
14 privilege issues that have not been waived.

15 MR. FALCONE: And you did not allow us to  
16 go into those, I guess based on your assertion of the  
17 privilege.

18 MS. SMITH: Right. Because I'm not  
19 asserting the privilege right now on behalf of Mike  
20 Catalino. There's other individuals who are our  
21 clients, including our civil clients right now, who  
22 have a privilege that exists with the joint defense  
23 agreement.

24 MR. FALCONE: Who is a participant to the  
25 joint defense agreement?

1 MS. SMITH: Do you want me to name -- all  
2 the individuals we represented.

3 MR. FALCONE: If you don't mind naming them  
4 or giving some way of putting some identity to them,  
5 that would be great.

6 MS. SMITH: Yes. Do you want me to go  
7 through all -- it includes every single person  
8 that -- every single member of the 2005-2006 team.

9 MR. FALCONE: Anyone else?

10 MS. SMITH: Including Devon Sherwood, who  
11 sought legal advice from us.

12 MR. FALCONE: In addition to the 2005-2006  
13 team, does the joint defense privilege you are  
14 asserting apply to anyone else?

15 MS. SMITH: Beyond the members of that  
16 team?

17 MR. FALCONE: Correct.

18 MS. SMITH: In terms of who -- in terms of  
19 other counsel, yes. I mean, if you're talking about  
20 the holder of the privilege, the holder of the  
21 privilege is the clients. But if you're talking  
22 about if you want me to go through individuals --

23 MR. FALCONE: I'm talking the holder of the  
24 privilege. Is there anyone beyond the 2005-2006  
25 team?

1 MS. SMITH: Mike Pressler.

2 MR. FALCONE: Did you represent Mike  
3 Pressler?

4 MS. SMITH: He at points came in and sought  
5 legal advice from Ekstrand & Ekstrand. And in that  
6 capacity, the holder of the privilege extends to the  
7 parents, who played the role of not just the payer,  
8 but also played the role of being part in assisting  
9 in the legal representation. I think we asserted  
10 that privilege with one of the parents yesterday.

11 MR. FALCONE: Coach Pressler, all the  
12 members of the 2005-2006 team, and all the parents of  
13 the members of the 2005-2006 team?

14 MS. SMITH: I mean, we would have to go  
15 through the individuals, with the parents and knowing  
16 who it applies to.

17 MR. FALCONE: So some of the parents it  
18 applies to and some it does not?

19 MS. SMITH: My position is that it applies  
20 to all of them. But if there was one that was not  
21 directly assisting in the legal representation, under  
22 the law, and was just a payer or something, then we  
23 wouldn't claim it. My belief is, looking back now,  
24 every single -- our position is that every single  
25 parent that was one of our parents of one of the

1 clients was a direct assistance in it. So we would  
2 say that the privilege does -- they're a holder of  
3 the privilege as well.

4 MR. FALCONE: When did that privilege  
5 begin?

6 MS. SMITH: March -- it depends per person.

7 MR. FALCONE: How much variance are we  
8 talking about?

9 MS. SMITH: I mean, you're talking about a  
10 couple of days when people that sought prior to  
11 the non-testimonial order, which was March 23rd. And  
12 then we had individuals who sought more legal  
13 assistance March 23rd. So what the joint defense  
14 agreement does is it retroactively dates back from  
15 not just the date that they signed that, but from  
16 when they sought legal assistance from us.

17 MR. FALCONE: So we've got Coach Pressler,  
18 every member of the '05-'06 team, every parent of the  
19 '05-'06 team. Anyone else?

20 MS. SMITH: No. I mean, not that I'm -- my  
21 position is to say that I do not believe that there  
22 is anyone else.

23 MR. FALCONE: John Lantzy?

24 MS. SMITH: To the extent, yes, at points  
25 he sought legal advice from us associated with the

1 case.

2 MR. FALCONE: Chris Kennedy?

3 MS. SMITH: No. Now, we have separate  
4 representation of Chris Kennedy on different matters.  
5 But in terms of -- what you're asking right now is  
6 the joint defense agreement that is in regards to the  
7 investigation in the criminal allegations; is that  
8 correct?

9 MR. FALCONE: That's correct.

10 MS. SMITH: Not any type of privilege that  
11 anyone has with any other type of matter with  
12 Ekstrand & Ekstrand?

13 MR. FALCONE: That's correct.

14 MS. SMITH: Okay. Then no.

15 MR. FALCONE: Any other employees of Duke  
16 University that are a member of the joint defense  
17 privilege that you've just described?

18 MS. SMITH: No.

19 MR. GUSTAFSON: Mr. Falcone, if you're done  
20 with this line of questioning, I feel I understand  
21 your position better at this point. And I would like  
22 to take another break, if I may, to confer with  
23 Stefanie. Would that be acceptable?

24 MR. FALCONE: That's fine.

25 THE VIDEOGRAPHER: Going off the record at



1 3:31 p.m.

2 (Recess.)

3 THE VIDEOGRAPHER: Back on the record at

4 3:40 p.m.

5 MS. SMITH: I just want to put on the  
6 record, in terms of the joint defense agreement, I am  
7 stating on the record today, whoever called the --  
8 there certainly could be someone that I'm leaving  
9 out. And to that extent, you can certainly ask in an  
10 interrogatory who are the members or signatories to  
11 the joint defense agreement.

12 What I say is, on the record, I'm not going  
13 to say who I stated is an exhaustive list. I think  
14 it is as close as possible. But if there's an  
15 individual who I'm not asserting it on behalf of, I'm  
16 certainly not waiving it as to them.

17 MR. FALCONE: Understood.

18 MR. GUSTAFSON: Mr. Falcone, we're prepared  
19 to permit your line of questioning provided that we  
20 can agree that we're waiving privilege only as to  
21 Michael's conversation with Ekstrand, at which this  
22 tape came up, and no further.

23 MR. FALCONE: We're not prepared to make  
24 any agreement about the scope of the waiver until we  
25 have any sense of the scope of the waiver. I think