

# EXHIBIT 19

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.            )  
  )  
  )  
\_\_\_\_\_/

Videotaped Deposition of THOMAS V. CLUTE

(Taken by Defendant)

Wednesday, March 21, 2012

Washington, DC

1 Q As you read the comment, did you find it to  
2 be a threatening comment?

3 A No.

4 Q Why not?

5 A Peter has a, you know -- is always joking  
6 around and has a pretty big sense of humor. I've  
7 known Peter for a while, and never been in any  
8 situation where he's threatened or has threatened me  
9 or has been in a threatening state.

10 Q So more based on your experience with  
11 Peter, you were able to know there wasn't a  
12 threatening comment?

13 A Yes.

14 Q Did you ever talk to Peter about the  
15 comment?

16 A No.

17 Q Did you hear anyone make a comment about a  
18 cotton shirt at the party?

19 A I don't remember.

20 Q Have you since heard anything about someone  
21 making a comment about a cotton shirt?

22 MS. SMITH: Objection. To the extent it  
23 calls for work product opinion or communications with  
24 counsel, I would instruct you not to answer.

25 A I'm not going to answer.

1 Q Who do you recall having a video camera?

2 A I don't remember. I believe everyone had a  
3 camera. I mean, phones had cameras then, I think.

4 Q Did you have a camera?

5 A I believe I did.

6 Q Did you take any photos of the party?

7 A I don't recall.

8 Q Did you take any videos of the party?

9 A No.

10 Q Did you talk to any of your teammates about  
11 a video being made at the party?

12 MS. SMITH: Objection to the extent that  
13 this conversation was in the presence of counsel or  
14 regarding advice from counsel, outside the presence  
15 of counsel.

16 A I'm not going to answer.

17 BY MR. FALCONE:

18 Q You're not answering based on Ms. Smith's  
19 instruction?

20 A Yes.

21 Q Who was present in the conversations that  
22 you're describing?

23 A Which conversations?

24 Q The conversation in which -- strike that.  
25 I understand you're not answering my question of did

1 you talk to your teammates about a video being made  
2 at the party based on Ms. Smith's instructions not to  
3 answer that question if it occurred in the presence  
4 of counsel, correct?

5 A Yes.

6 Q And I'm just asking who was there in that  
7 conversation.

8 MS. SMITH: Just for the record, I'm  
9 including outside the presence of counsel to the  
10 extent that they were discussing advice from counsel.

11 BY MR. FALCONE:

12 Q Understanding that, who was there at this  
13 conversation?

14 A I don't recall.

15 Q You don't recall who was there?

16 A No.

17 Q Do you recall the conversation?

18 A I don't recall the conversation.

19 Q But you're going to refuse to answer my  
20 question based on instruction from counsel?

21 A Yes.

22 Q Did you ever discuss with any of your  
23 teammates about destroying a video of the party?

24 MS. SMITH: Objection. Same instruction  
25 applies. Same objection.

1 A I don't recall.

2 Q Do you have any reason to believe that  
3 attorneys for Duke attended the hearing on the motion  
4 to quash the subpoenas?

5 MS. SMITH: Objection. To the extent that  
6 that calls for communications with counsel, I  
7 instruct you not to answer.

8 A I'm not going to answer the question.

9 BY MR. FALCONE:

10 Q Again, you've said that you've read the  
11 complaint in the case you've filed against Duke?

12 A Yes.

13 Q After reading the complaint, did you have  
14 any understanding as to whether or not attorneys for  
15 Duke attended the hearing?

16 A I don't recall.

17 Q If you turn to what is the third page of  
18 this document, and I apologize, they've got a blank  
19 page in between each one, that's how it was produced.  
20 I'm looking at the bottom of that third page, under  
21 number 9, which reads, "Undersigned counsel has  
22 specifically notified legal counsel for Duke  
23 University that neither Mr. Clute nor his parents  
24 consent to the disclosure of these Federally  
25 protected records. This action was taken to

1 There were incidents -- I mean, Dean Rasmussen's  
2 advice was to leave multiple times. I stayed off  
3 campus because of incidents occurring with other  
4 lacrosse players, incidents that occurred like Take  
5 Back the Night outside of my dorm room where hundreds  
6 of people -- where people gathered.

7 Q Where in Dean Rasmussen's e-mail does she  
8 tell you to leave campus?

9 A Again, Dean Rasmussen and I had an ongoing  
10 relationship and communication. In this current  
11 e-mail, I think she's trying to best balance the  
12 desires that she knew we had and her belief that we  
13 should leave with our academic schedule.

14 Q But you would agree with me that in this  
15 e-mail at least she's not telling you to leave  
16 campus, correct?

17 A In this e-mail, no.

18 MS. SMITH: Jeremy, just not to interrupt  
19 for a second, but if you're done with this e-mail, I  
20 just want the record to show that on behalf of the  
21 McFadyen plaintiffs, we do not believe that there's  
22 any waiver of the work product privilege with this  
23 untitled attachment.

24 MR. FALCONE: Despite the fact that he  
25 forwarded it to his sister?

1 MS. SMITH: Yes, because Mr. Clute's choice  
2 to waive it by forwarding it to his sister does not  
3 waive it on behalf of our clients, according to the  
4 joint defense agreement, and also the work product  
5 privilege that we do still assert.

6 MR. FALCONE: Is Kate Clute a participant  
7 to the joint defense agreement?

8 MS. SMITH: It is Mr. Clute's e-mail to his  
9 sister that you're asserting waives it. And I'm  
10 simply asserting -- I mean, we can continue to  
11 discuss this now or we can save it. I'm asserting  
12 for the record before we leave the topic of this  
13 e-mail that we do not believe that the untitled  
14 attachment, the work product opinion associated with  
15 that, has been waived.

16 MR. FALCONE: Okay.

17 BY MR. FALCONE:

18 Q Mr. Clute, if you could turn back to  
19 Exhibit 1. Interrogatory number 11.

20 A Yes.

21 Q You state, "Living on east campus where  
22 many of the demonstrations happened, I was forced to  
23 leave school and return home."

24 When did you first go home?

25 A I don't recall the exact date.